

## CHAPTER 1 CPE DETERMINATIONS PROCESSING

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*And*

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**INTERNAL REVENUE SERVICE  
TAX EXEMPT AND GOVERNMENT ENTITIES**

### TABLE OF CONTENTS

<b>BACKGROUND</b>	<b>3</b>
<b>CASE ASSIGNMENT</b>	<b>4</b>
<b>FORM 5464, CASE CHRONOLOGY RECORD</b>	<b>4</b>
<b>FORM 5621, CASE ANALYSIS CONTROL SHEET</b>	<b>4</b>
<b>FORM 8717, USER FEE FOR EMPLOYEE PLAN DETERMINATION LETTER REQUEST</b>	<b>5</b>
<b>CASE ANALYSIS</b>	<b>7</b>
COMPLETE ANALYSIS	8
ISSUE ONLY ANALYSIS	8
<b>INFORMATION REQUESTS</b>	<b>8</b>
<b>LACK OF RESPONSE/INCOMPLETE APPLICATIONS</b>	<b>9</b>
LACK OF RESPONSE	9
INCOMPLETE APPLICATIONS	9
<b>WITHDRAWAL OF APPLICATIONS</b>	<b>10</b>
<b>TERMINATIONS FORM 5310</b>	<b>11</b>
REVERSIONS	12
<b>INTERESTED PARTY COMMENTS</b>	<b>12</b>
<b>MULTIPLE EMPLOYER PLANS</b>	<b>13</b>
<b>NON AMENDER/LATE AMENDER PLANS</b>	<b>13</b>
CLOSING AGREEMENTS	13
PROPOSED ADVERSE	13
<b>EP DETERMINATIONS QUALITY ASSURANCE</b>	<b>13</b>
TEQMS REQUIREMENTS	14
MANDATORY REVIEW	14
<b>CASE CLOSING</b>	<b>15</b>
FAVORABLE CLOSING LETTERS	15
CAVEATS	15

<b>Employee Plans CPE Topics For 2002</b>
---

CASE FILE ASSEMBLY -----	16
<b>EXHIBIT 1-FORM 3210, TRANSMITTAL DOCUMENT -----</b>	<b>17</b>
DOCUMENT -----	17
<b>EXHIBIT 2-SPECIAL HANDLING NOTICE -----</b>	<b>19</b>
<b>EXHIBIT 2A-TRANSMITTAL DOCUMENT -----</b>	<b>21</b>
DOCUMENT -----	21
<b>EXHIBIT 3 SPECIAL HANDLING NOTICE -----</b>	<b>23</b>
<b>EXHIBIT 3A-ROUTING SLIP-FORM 1725-----</b>	<b>25</b>
<b>REMARKS-----</b>	<b>26</b>
<b>EXHIBIT 4 RETURN OF APPLICATION FOR LACK OF RESPONSE -----</b>	<b>27</b>
FY-2001 No. 3-----	27
<b>RETURN OF APPLICATIONS FOR LACK OF RESPONSE-----</b>	<b>JANUARY 25, 2001</b>
<b>29</b>	
ATTACHMENT A -----	30
ATTACHMENT B-----	33
ATTACHMENT C-----	34
<b>EXHIBIT 5-TERMINATION WORKSHEET-----</b>	<b>36</b>
<b>EXHIBIT 6—INTERESTED PARTY COMMENTS -----</b>	<b>41</b>
FY-2002 No. 2-----	41
<b>EXHIBIT 7 FY-2002 NO. 1 QUALITY ASSURANCE BULLETIN -----</b>	<b>51</b>
<b>EXHIBIT 8 -----</b>	<b>56</b>
<b>EXHIBIT 9 -----</b>	<b>58</b>
<b>EP DETERMINATION LETTER AND CLOSING TRANSMITTAL WORKSHEET-----</b>	<b>58</b>
NAME OF CASE _____	DLN:
17007 _____	58
<b>GUST I/II WORKSHEETS-----</b>	<b>60</b>
<b>(GUST 2)-----</b>	<b>69</b>
<b>NOTICE 2002-1 END -----</b>	<b>71</b>
<b>PART III -- ADMINISTRATIVE, PROCEDURAL AND MISCELLANEOUS -----</b>	<b>71</b>

## BACKGROUND

The Employee Plans (EP) Determination Letter Program provides a means whereby plan sponsors may submit their retirement plans to the Service for review. The Service reviews the form of the plan and, if the plan sponsor elects, reviews certain operational features as well. If the plan meets the qualification requirements under 401(a) of the Internal Revenue Code (Code), a favorable determination letter is issued to the plan sponsor. The letter gives the employer reliance on the form of plan.

Revenue Procedure (Rev. Proc.) 2002-6 sets forth the current procedures for requesting favorable determination letters. A similar revenue procedure is issued annually to provide updates on new legislation, policy, and procedures.

Rev. Proc. 2002-6 provides that determination letters may be requested on completed and proposed transactions as follows:

- Initial Qualification and Amendments for:
  - Individually designed plans
  - ESOPs
  - Collectively bargained plans
  - Adoptions of Master & Prototype Plans
  - Adoptions of Volume Submitter Plans
  - Multiple Employer Plans
  - Group Trusts
- Minor Amendments
- Terminations

In addition, the Rev. Proc. provides guidance for obtaining rulings in the following areas:

- Affiliated service group status
- Leased employees
- Minimum funding waivers
- Code section 401(h) determination letter
- Code section 420 determination letters including other matters under section 401(a)
- Code section 420 determination letters excluding other matters under section 401(a)

Rev. Proc. 2002-6 provides determination letters will not be issued in the following areas that are within the jurisdiction of the Commissioner, TE/GE:

- Issues involving sections 72, 79, 105, 125, 127, 129, 402, 403 (other than 403(a)), 404, 409(l), 409(m), 412, 457, 511 through 515, and 4975 (other than 4975(e)(7)) of the Code

- Automatically approved plans or plan amendments
- Certain plan amendments described in Section 3.02 (3)
- HSOPs (Plans that combine an ESOP (as defined in Code section 4975(e)(7)) with retiree medical benefits described in Code section 401(h))

## **CASE ASSIGNMENT**

Once the case is assigned (updated to status 52 on EDS), it should be entered on the agent's ETTS Form 6490. The FY 2002 activity code for determination cases is 301 and the project code is 999. The assignment date should be noted on Form 5464, Case Chronology Record. Determination cases should be worked in control date order with termination cases receiving priority.

## **FORM 5464, CASE CHRONOLOGY RECORD**

The Form 5464, Case Chronology Record should be documented, and time charged, for each action taken on the application. It should reflect a complete, accurate, and legible documentation of the case history including:

- Case assignment date
- Contacts with the taxpayer, representative, and third parties including telephone conversations and follow-up letters
- Follow-up dates
- Research performed
- Explanation of large gaps of time
- Date case closed and forwarded to group manager

The form should indicate the name of the applicant, EP Specialist's name, names of individuals contacted and completion dates. Only widely recognized abbreviations should be used (i.e., Power of Attorney). Actions by the group manager should also be documented, but evaluative comments should be omitted.

## **FORM 5621, CASE ANALYSIS CONTROL SHEET**

The technical screener uses Form 5621, Technical Analysis Control Sheet to identify issues the EP Specialist should consider when reviewing an application. However, it is the EP Specialist's responsibility to ensure the qualification of the retirement plan by expanding the scope of the review, if necessary.

A properly completed Form 5621 contains both the technical screener's and the EP Specialist's initials along with the date it was prepared. The "Other Issues Reviewed By EP Specialist" section of the form should be used by the EP Specialist to note and explain any items which conflict with the issues identified

by the technical screener.

Any unusual situations or circumstances should be noted on the Form 5621.

## **FORM 8717, USER FEE FOR EMPLOYEE PLAN DETERMINATION LETTER REQUEST**

Applicants requesting determination letters may be required to pay a user fee to the Service. Form 8717 must be completed and accompany all determination applications. Details are available in Rev. Proc. 2002-8 (revised annually).

The EP Specialist is responsible for ensuring the correct user fee is paid, for securing additional fees due, and for refunding excess fees paid. The Cincinnati Service Center processes all user fees.

For applications filed after December 31, 2001, Notice 2002-1 eliminated user fees for certain plans. Those plans exempt from the payment of user fees must meet the "eligible employer" criteria as described in Q&As B-1, B-5, C-4 and C-5 of Notice 98-4.

In general, "eligible employer" (as defined in Code section 408(p)(2)(C)(i)(1)) means an employer who (1) must have had no more than 100 employees who received at least \$5,000 of compensation from the employer for the calendar year immediately preceding the calendar year in which the determination letter request is filed ("the preceding calendar year") and (2) had at least one employee who is not a highly compensated employee (as defined in § 414(q)) for the plan year immediately preceding the plan year in which the determination letter request is filed ("preceding plan year") and who participated in the plan for the preceding plan year. Fees are not eliminated for:

- Opinion/advisory letters for master/prototypes and volume submitters
- Applications submitted after the later of the 5<sup>th</sup> plan year the plan is in existence or the end of the remedial amendment period with respect to the plan beginning within the first 5 plan years
- Minimum funding waivers
- Group trusts

NOTE: In determining if an employer is an eligible employer for purposes of the elimination of the user fee, all employers aggregated under §414(b), (c) or (m) are treated as a single employer and leased employees described in §414(n) are treated as employed by the employer.

### **ADDITIONAL USER FEES**

If the EP Specialist secures an additional user fee, the following items must be forwarded to the User Fee Adjustment Clerk :

- Completed Form 3210, Document Transmittal - See EXHIBIT # 1

- Additional user fee payment
- The original first page of the application
- Original Form 8717

**Note:** Make a copy for your files of the Form 8717 and the first page of the application before sending originals.

Send the above information to:

Internal Revenue Service - TEGE  
Attention: EP User Fee Adjustment Clerk  
Room 4024  
P.O. Box 2508  
Cincinnati, OH 45201

When closing a case where the Form 8717 and the first page of the application have been forwarded to the User Fee Adjustment Clerk the case must be held open in the group until verification is received that the additional user fee has been accepted and processed. Once this is received, follow normal case closing procedures.

### **ADDITIONAL USER FEE WITH A NEW APPLICATION**

There are situations when securing an additional user fee a new application will also be required. Generally, this occurs when the original submission involves a Form 5307, Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans and a determination is made that a Form 5300, Application for Determination for Employee Benefit Plan, is required as a result of major modifications to a prototype or volume submitter plan.

When this occurs secure a signed and completed Form 5300 and the additional user fee. A package should be prepared which should include: 1) the first page of the Form 5300, 2) the original Form 8717 3) the additional user fee payment and 4) a Form 3198. This should be sent to the EP User Fee Adjustment Clerk, at the address listed above, with instructions to establish the Form 5300 and process the additional user fee. See EXHIBIT 2.

**Note:** Make a copy for your files of the Form 8717 and the first page of the application before sending originals.

Once the case is returned have you secretary "dump" the Form 5307 application by using an EDS status correction disposal of "30". It is essential in order to maintain the administrative file that the Form 5307 be left in the file. The Form 5307 should be labeled "For Information purposes".

### **USER FEE REFUNDS**

User fee refund requests should be submitted with the closed case to the Records Unit. When closing a case with a refund, place Form 3198, Special

Handling Procedures, (See EXHIBIT 3) on the outside of the case file with the following instructions: "Forward to the EP User Fee Adjustment Clerk for Refund." Prepare a routing slip (See EXHIBIT 3 A) stating the amount of and reason for the refund. The routing slip must be signed by the group manager or a designated reviewer and placed prominently on the outside of the case file folder. The closed case should then be forwarded to:

Internal Revenue Service TEGE  
Attention: Records Unit  
P.O. Box 2508  
Cincinnati, OH 45201

**Note:** If the case is selected for review (TEQMS or Mandatory) the case **should not** be sent to the above address but rather to:

Internal Revenue Service TEGE  
EP Determinations Quality Assurance Staff  
Room 7008  
P.O.Box 2508  
Cincinnati, OH 45201

Generally the user fee will not be refunded if the application is withdrawn. See Section 10 of Rev. Proc. 2002-8 for specific guidance.

## CASE ANALYSIS

The extent of the analysis is dependent upon a number of factors including, but not limited to, type of plan or the scope of reliance requested. Cover letters sent with the application should be reviewed to determine if unusual circumstances exist. In accordance with Section 2.02 of Rev. Proc. 2001-6 determination letter applications filed after March 3, 2001 for individually designed plans, including volume submitter plans must be reviewed for all of the qualification requirements made by GUST. Plans submitted for GUST determination letters may reflect the changes made by EGTRRA, but until further notice, determination, opinion, and advisory letters will not consider the EGTRRA changes. Notice 2001-42.

Rev. Proc. 2001-55 extended the GUST remedial amendment period to February 28, 2002, if the period would otherwise end before then. An additional extension was granted to June 30, 2002 for plans that were directly affected by the September 11, 2001 terrorist attack on the United States.

The technical screener will identify on Form 5621 the extent of the analysis. The categories of analyses are:

- Complete Analysis
- Issue Only Analysis

## COMPLETE ANALYSIS

A complete analysis is an in-depth review of all plan provisions affecting qualification. Worksheets 1 through 12 should be used in determining a plan's compliance with all current and prior pension laws. Each worksheet has a companion Explanation and Plan Deficiency Checksheet. The Explanation provides instructions and interpretations for all the questions on each worksheet. The Plan Deficiency Checksheets provide standardized paragraphs for missing or erroneous plan language. The paragraphs are available on EDS and in a Microsoft Word format, which the Cincinnati office has prepared.

## ISSUE ONLY ANALYSIS

If the technical screener classifies the application as an "issue only" analysis, the review should generally be limited to those items identified unless the EP Specialist recognizes other issues. Then, with group manager's approval, the scope of the review may be expanded.

Any applicable worksheets should be prepared.

NOTE: The following plan qualification requirements are not listed on any worksheet at this time: 1] the requirements of Code section 414(u), 2] the change made by the Revenue Reconciliation Act of 1998 to the definition of eligible rollover distribution (Code section 401(a)(31)) which states that hardship distributions described in Code section 401(k)(2)(B)(i)(IV) do not qualify as an eligible rollover distribution and 3] the change made to the definition of compensation enacted with the Community Renewal Act of 2000.

## INFORMATION REQUESTS

If amendments, additional information or clarifications are required, contact the plan sponsor and Power of Attorney (POA), if applicable, by telephone or in writing. The following list identifies the various types of information requests.

- Letter 1196 - Initial Contact: This should include a detailed list of amendments and information needed. A two week response deadline should be utilized with extensions granted as requested by the plan sponsor or POA.
- Letter 1955 - Additional Information: This is a follow up letter to request new information or clarification of previous information. This should also utilize a two week deadline with extensions.
- 15 day Letter: This is used as a precursor to returning the case for application deficiencies on a 1012 Letter. (See Attachment B of EXHIBIT 4)
- Letter 1197 - 10 day letter: This allows the plan sponsor or POA an additional ten days to furnish the required information. Informs the



applicant that failure to comply within the 10-day period may result in the application being processed on the basis of the information available. Extensions should generally not be provided. This letter must be approved by the group manager and issued under the signature of Paul T. Shultz, Director, EP Rulings & Agreements.

If the applicant fails to furnish the requested facts, information, or amendments timely, process the application on the basis of the information previously provided and, if necessary, disqualification should be considered. Guidance will soon be forthcoming in the form of a Quality Assurance Bulletin, which will address proposed adverse case handling.

NOTE: All information requests should contain a complete list of amendments and/or items needed to process the application. In addition, all letters should be professional in tone, clear, concise and contain citations where appropriate.

## LACK OF RESPONSE/INCOMPLETE APPLICATIONS

### LACK OF RESPONSE

The EP Specialist reviewing the plan is responsible for identifying all necessary amendments and requesting them from the plan sponsor/POA. If no response is received in a reasonable amount of time on individually designed plans, the EP Specialist may return the case via Letter 2234 (See Attachment A to EXHIBIT 4), ***if the language deficiencies are numerous and egregious.***

Letter 2234 is used to return those plans that do not comply with existing qualification requirements, and that are so technically deficient they cannot be reviewed in a reasonable amount of time. Group manager concurrence is necessary and the Letter 2234 must be accompanied by an itemized explanation of all areas in which the plan is deficient.

Letter 2234 cannot be used for a terminating plan. Language deficiencies in terminating plans must be addressed using proposed adverse procedures.

If plan amendments are requested but the plan sponsor/POA declines to make them because they do not agree they are necessary, the case should not be returned. In this situation, the EP Specialist should process the case under the proposed adverse procedures, since there is a disagreement between the Service and the plan sponsor/POA regarding the acceptability of plan provisions.

See EXHIBIT 4, which contains Quality Assurance Bulletin 2001-3 "Return of Applications For Lack of Response" for additional guidance.

### INCOMPLETE APPLICATIONS

If an applicant does not comply with the required provisions of Rev. Proc. 2002-6, (i.e., the application is not signed, or attachments are incomplete or missing), the EP Specialist may return the application as incomplete via Letter 1012 (See Attachment C to EXHIBIT 4).

A special 15-day letter is available to notify the applicant prior to returning the application via Letter 1012. See Attachment B to EXHIBIT 4.

The following instructions apply to returning a case for lack of response or as incomplete.

- A. Copy the Form 8717.
- B. Place original Form 8717 on left side of folder.
- C. Review the file to extract all correspondence from the Service and any internal documents or workpapers. These items should also be placed on the left side of the folder.
- D. Bundle the remaining application package together, this will include the letter prepared to return the case (1012 or 2234).
- E. Prepare an envelope to return application to POA, if applicable, or plan sponsor. When returning the application to the POA prepare an envelope to mail a copy of the 1012 or 2234 letter to the plan sponsor.
- F. Close case on EDS using status code 03. Required fields include: specialist's number, case grade, and time charged.

## **WITHDRAWAL OF APPLICATIONS**

The applicant may withdraw a request for a determination letter at any time prior to the issuance of a final adverse determination letter (see section 6.19 of Rev. Proc. 2002-6). If an appeal to a proposed adverse determination letter is filed, a request for a determination may be withdrawn at any time prior to the forwarding of the proposed adverse action to the Chief, Appeals Office. The EP Specialist should take the following steps for withdrawals:

- Require that the withdrawal request be in writing.
- Prepare Letter 2044 (on EDS) to acknowledge the withdrawal. This letter may be issued at any time after receipt of the applicant's written request. Caveat 8000 is required and the date of the withdrawal letter should be entered. The 60-day holding period allowing interested parties to comment does not apply.
- Generally the user fee is not refundable for applications withdrawn. See Section 10 of Rev. Proc. 2002-8
- Close case on EDS using closing code "04". Required fields include: effective date, law Indicator: "N", specialist's number, case grade and time charged.

NOTE: For this purpose, the Service retains the entire application case file. Plan sponsors/POAs will receive only the 2044 Letter.

## TERMINATIONS FORM 5310

Form 5310, Application for Determination for Terminating Plan, is used by any plan sponsor or administrator of any pension, profit sharing or other deferred compensation plan to request a determination letter on the plan's qualified status at the time it terminates. (NOTE: Multiemployer plans covered under PBGC which are terminating must file a Form 5303, Application for Determination for Collectively Bargained Plan for applications submitted on or before March 31, 2002, and must file a Form 5300 for applications submitted after March 31, 2002.)

Schedule Q must generally be filed with Form 5310. Instructions to the Schedule Q provide guidance on which line items are required for terminations. Section 12.04 of Rev. Proc. 2002-6 states that an applicant requesting a determination letter upon termination may not decline to elect that the plan be reviewed for the minimum coverage requirements or the nondiscrimination in amount requirement, as otherwise permitted, unless the following conditions are satisfied:

- (1) With respect to the coverage requirements, in the year of termination the plan must use the average benefit test and the plan must have received a prior favorable determination letter that stated that the plan satisfied the requirements of the test;
- (2) With respect to the nondiscrimination in amount requirement, in the year of termination the plan must use either a nondesign-based safe harbor or the general test for nondiscrimination in amount and the plan must have received a prior favorable determination letter that stated that the plan satisfied the requirements of either a nondesign-based safe harbor or the general test;
- (3) The favorable determination letter was issued during the immediately preceding three plan years; and
- (4) There has been no material change in the facts (including benefits provided under the plan and employee demographics) or law upon which the determination was based.

Form 6677, Plan Termination Standards, is a checklist that should be used in reviewing terminations. The worksheet labeled EXHIBIT 5 may be used in lieu of Form 6677. Note: **Neither of these worksheets is designed to address every possible issue which may arise in reviewing a Form 5310 application.**

Internal Revenue Manual Section (IRM) 7.7.2, Plan Terminations, contains a comprehensive list of issues to consider in termination cases, guidance on identifying issues, and appropriate legal citations.

The technical screener will identify the case as complete analysis or issue only. If the technical screener classifies the application as an "issue only" analysis, the review should generally be limited to those items identified unless the EP Specialist recognizes other issues. Then, with group manager's approval, the

scope of the review may be expanded.

NOTE: If upon review you determine that the employer is liable for an excise tax return due to a minimum funding deficiency or prohibited transaction, local procedures for excise tax case establishment and/or unagreed cases should be adhered to. Please note that agents located in Cincinnati must adhere to the October 27, 1997 Memorandum from Director, Employee Plans Division entitled "Best Practices" for Processing Closing Agreements Arising under Walk-In CAP and the Determination Letter Program.

## REVERSIONS

If there will be a significant reversion of assets to the employer, the agent should complete Form 5346 for the appropriate income tax examination function, to alert them to the income from the reversion. For all reversions the agent should prepare a reversion packet for EP Classification. The package must contain:

- Form 5666 – including information on the reversion excise tax (contingent upon the adoption of a qualified replacement plan)
- Copy of the first page of Form 5310
- Copy of the 1132 Closing letter
- Copy of the Form 9098 issued with the closing letter
- Copy of 6088

Reversion packages are sent to:

IRS  
EP Classification Unit  
McCaslin Industrial Park  
2 Cupania Circle  
Monterey Park, CA 91755-7431

A copy of the reversion package should be placed on the left side of the folder upon case closing.

## INTERESTED PARTY COMMENTS

A Comprehensive QAB has been prepared on this subject and has been included as EXHIBIT 6.

## **MULTIPLE EMPLOYER PLANS**

A Comprehensive QAB has been prepared on this subject and has been included as EXHIBIT 7.

## **NON AMENDER/LATE AMENDER PLANS**

### **CLOSING AGREEMENTS**

If it is discovered during the determination letter process that a plan was not timely amended, a closing agreement should be considered. Follow the procedures below:

- Contact the plan sponsor to discuss the problem
- Coordinate the case with your local Closing Agreement Program (CAP) Coordinator
- Secure the appropriate amendments
- Obtain a statement from the plan sponsor that the benefits of both the current and former participants will be restored to the levels they would have been had the plan been timely amended
- Secure the negotiated sanction
- Follow your locally developed CAP procedures to process your closing agreement and close your case

### **PROPOSED ADVERSE**

There may be situations where the CAP cannot be utilized, in those situations disqualification will be necessary. Guidance will soon be forthcoming in the form of a Quality Assurance Bulletin, which will address proposed adverse case handling.

## **EP DETERMINATIONS QUALITY ASSURANCE**

The EP Determinations Quality Assurance staff has prepared a number of Bulletins which contain valuable guidance for working determination cases. A number of these Bulletins are included as Exhibits to this text. All of the Bulletins are accessible through the intranet at:

<http://tege.web.irs.gov/ep/rulings/assurance/bulletins.htm>.

## TEQMS REQUIREMENTS

TEQMS was designed to measure the quality of cases and achieve statistical validity at the national level. As part of the new “business results” measurement, management is required to use TEQMS reports to identify improvement opportunities.

Reviewers are charged with applying the TEQMS standards to determination cases and reporting the results of those reviews. These reviews:

- Provide feedback to management
- Identify improvement opportunities in case quality
- Improve customer service and satisfaction
- Identify training/CPE needs
- Increase consistency in determinations

A TEQMS Checklist has been prepared which outlines all the TEQMS standards which apply to EP Specialists (see EXHIBIT 8).

## MANDATORY REVIEW

IRM section 7.4.1.3.2.1 identifies cases subject to mandatory review. They are as follows:

- Interested Party Comments
- Terminations with reversions > \$500,000
- Terminations with over 750 participants
- 5% of all other terminations (selected by EDS)
- Tech Advice/Tech Assistance
- Proposed adverse determination cases
- Group manager selections
- Cases designated by HQ

If a case is required to be forwarded to QAS (TEQMS or mandatory) you should –

- Not date or mail letter
- Send entire case file to EP Determinations Quality Assurance Staff, P.O. Box 2508, Cincinnati, OH 45201 – Room 7008
- Update case on EDS to status 31

NOTE: If you have two or more related cases and one is selected or subject to review, you should send all the cases to QAS Determinations (see above address).

## CASE CLOSING

### FAVORABLE CLOSING LETTERS

All favorable case closings should generate an 835 letter (determinations) or an 1132 letter (terminations). Both letters should be generated from EDS in order to create a historical record.

An aid to use in preparing a closing letter (835 or 1132) is the EP Determination and Closing Transmittal Worksheet. **See EXHIBIT 9.** The worksheet contains information necessary to prepare the closing letter and the Closing Document, Form 8671.

The following is a list of points to keep in mind when closing a determination case:

- Review EDS input sheet located on the outside of the case folder for accuracy - make any corrections prior to generating a closing letter
- Do not date or mail the closing letters if the case is being sent to QAS
- All letters should be professional in tone and appearance.

### CAVEATS

Effective July 23, 2001 all caveats with respect to coverage and/or nondiscrimination in amount requirements as elected via Schedule Q were eliminated. Announcement 2001-77 outlined this change and provided that the scope of reliance will be based upon (1) the information submitted with the application and (2) the relevant information and demonstrations are retained by the applicant. The Publication 794 that accompanies the determination letter also clearly delineates what the plan sponsor's responsibilities are.

It is not acceptable to "re-create" the old coverage and/or nondiscrimination in amount caveats by way of a 9000 series paragraph. Please be aware that any individually designed paragraphs should always begin with paragraph 9001.

Care should be taken when entering variable dates, for example:

- Use the date of the cover letter or fax for proposed amendments
- Use the date the amendment(s) are executed by the employer, (not the date signed by the M&P sponsor, bank trustee, etc)

NOTE: Any time a change is made to the Schedule Q or a Demo which will affect the scope of reliance caveats 94 and 95 or 54 and 55 should be used on an 835 or 1132 letter, respectively. The variable date entered should be the date the Schedule Q or Demo was sent and not the date received by the Service.

## **CASE FILE ASSEMBLY**

The case file should be properly assembled in accordance with QAB 2001-4 before submitting to group manager for closing.



**EXHIBIT 1-FORM 3210, TRANSMITTAL DOCUMENT**

<b>DOCUMENT</b>	To (Show complete and correct address)	Release date	Page _ of
Transmittal	IRS – TE/GE Division 550 Main Street – Room 4024 Cincinnati, OH 45202 Attn: EP User Fee Adjustment Clerk	Transmittal code (from Serial no. - To)	
		Numbered	Unnumbered

Document Identification			Remarks	Shipment Information	
Quantity	Code or Type	Instructions: When transmitting reports please show the type of report and the period covered. For other items, show identifying information such as blocks, DLN, EIN, SSN, etc.	Please process additional user fee for the following case(s):	Container No.	Rec'd (✓)
		Name of Case:			
		EDS Case Number:			
		EIN:			
		<b>Attached are:</b>			
1		Original Form 8717			
1		Original 1 <sup>st</sup> page of Form _____ (i.e., 5300, 5307, 5310)			
1		Remittance Check Number _____ Amount of \$ _____			

Employee Plans CPE Topics For 2002
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	ONCE THE CHECK HAS BEEN PROCESSED, PLEASE RETURN ORIGINAL DOCUMENTS TO THE ADDRESS BELOW	

From (Originator must supply complete address below)	Releasing official (signature and title)
	Received and Verified (signature and title)
	Originator telephone number
	Date Acknowledged

Form **3210** (Rev. 7-90)  
Treasury

Department of the  
Internal Revenue Service

## EXHIBIT 2-SPECIAL HANDLING NOTICE

### SPECIAL HANDLING NOTICE

Name

Year(s) Period(s) Ended  
Plan No.

#### Quality Measurement Staff

☐

Mandatory Review (*State nature, per IRM 4414.1*)

☐

Sample Review

☐

Systematic

☐

Management Identified

☐

TCMP

☐

Joint Committee Case

☐

Employee Return

### EXPEDITE

☐

PROMPT ASSESSMENT REQUEST, EXPIRES

☐

Other

SPECIFY

### SPECIAL HANDLING/PROCESSING INSTRUCTIONS

(IRM 48(13)1-EXHIBIT 300-1, IRM 4414 AND IRM 4482.21)

☐

Issue Notice of Claim Disallowance

☐

Address/Name Change

☐

Restricted interest case, IRC section

☐

Send all Communications as per power of attorney

☐

Assess/Adjust

☐

Deficiency, claim involved

☐

Penalty

☐

Prepayment Credit

☐

Partial Agreement

☐

Partial Payment

☐

Manual refund

☐

Deceased taxpayer

☐

Hardship Case

☐

Innocent Spouse

☐

Process

**Employee Plans CPE Topics For 2002**

☒ Other (*Specify*) **Please process additional user fee of \$ \_\_\_\_\_ and establish the new application (Form \_\_\_\_\_) enclosed. Once the user fee is processed, please return documents to (see below).**

---

☒ Special Instructions (*State nature, date & initial*)

<b>* Agent's Name:</b> _____	Date _____	Initials _____
<b>* Address:</b> _____	Date _____	Initials _____
<b>Telephone Number:</b> _____	Date _____	Initials _____
_____	Date _____	Initials _____

Note: This form is to be fastened at the upper left corner of the case file and on top of all other forms except Form 895 and 2644

**EXHIBIT 2A-TRANSMITTAL DOCUMENT**

<b>DOCUMENT</b>		To (Show complete and correct address)  IRS – TE/GE Division 550 Main Street – Room 4024 Cincinnati, OH 45202 Attn: EP User Fee Adjustment Clerk	Release date	Page _ of	
Transmittal			Transmittal code (from Serial no. - To)		
			Numbered	Unnumbered	
<b>Document Identification</b>			<b>Remarks: Please process the additional user fee and establish the enclosed application</b>		<b>Shipment Information</b>
<b>Quantity</b>	<b>Code or Type</b>	<small>Instructions: When transmitting reports please show the type of report and the period covered. For other items, show identifying information such as blocks, DLN, EIN, SSN, etc.</small>			
		<b>Name of Case:</b>			
		<b>Original EDS Case Number:</b>			
		<b>EIN:</b>			
		<b>Attached are:</b>			
1		<b>Original Form 8717</b>			
1		<b>Original 1<sup>st</sup> page of Form _____ (i.e., 5300, 5307, 5310)</b>			
1		<b>1<sup>st</sup> Page of Form _____ (i.e., 5300, 5307, 5310)</b>			
1		<b>Form 3198 (with instructions)</b>			
1		<b>Remittance:</b> <b>Check Number: _____ Amount of \$ _____</b>			

Employee Plans CPE Topics For 2002
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		ONCE THE CHECK HAS BEEN PROCESSED, PLEASE RETURN ORIGINAL DOCUMENTS TO THE ADDRESS BELOW		

From (Originator must supply complete address below)

Releasing official (signature and title)

Received and Verified (signature and title)

Originator telephone number

Date Acknowledged

Form **3210** (Rev. 7-90)  
Treasury

Department of the  
Internal Revenue Service

**EXHIBIT 3 SPECIAL HANDLING NOTICE**

Name

Year(s) Period(s) Ended  
Plan No.**Quality Measurement Staff**☐Mandatory Review (*State nature, per IRM 4414.1*)☐

Sample Review

☐

Systematic

☐

Management Identified

☐

TCMP

☐

Joint Committee Case

☐

Employee Return

**Expedite**☐

Prompt Assessment Request, Expires \_\_\_\_\_

☐Other \_\_\_\_\_  
**Specify****Special Handling/Processing Instructions***(IRM 48(13)1-Exhibit 300-1, IRM 4414 and IRM 4482.21)*☐

Issue Notice of Claim Disallowance

☐

Address/Name Change

☐

Restricted interest case, IRC section \_\_\_\_\_

☐

Send all Communications as per power of attorney

☐

Assess/Adjust

☐

Deficiency, claim involved

☐

Penalty

☐

Prepayment Credit

☐

Partial Agreement

☐

Partial Payment

☐

Manual refund

☐

Deceased taxpayer

☐

Hardship Case

☐

Innocent Spouse

☐

Process

Employee Plans CPE Topics For 2002

☒

Other (*Specify*) **Please forward case to EP USER FEE ADJUSTMENT CLERK to have refund processed based on attached Routing Slip. Once the user fee refund is processed, please forward closed case to RECORDS UNIT.**

☒

Special Instructions (*State nature, date & initial*)

\* **Agent's Name:** \_\_\_\_\_ Date \_\_\_\_\_ Initials \_\_\_\_\_

\* **Address:** \_\_\_\_\_ Date \_\_\_\_\_ Initials \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_ Date \_\_\_\_\_ Initials \_\_\_\_\_

Note: This form is to be fastened at the upper left corner of the case file and on top of all other forms except Form 895 and 2644



**EXHIBIT 3A-ROUTING SLIP-FORM 1725****ROUTING  
SLIP**

INTERNAL REVENUE SERVICE

TO	Symbol	Room	Action Code	Initial Date
EP User Fee Adjustment Clerk				
RE:				
EIN:				

- |  |  |                                      |
|--|--|--------------------------------------|
| <input type="checkbox"/> 1. Per our<br>reply | <input type="checkbox"/> 7. Signature                    | <input type="checkbox"/> 14. Prepare |
| conversation                                 | <input type="checkbox"/> 8. Initials                     | for                                  |
| signature of                                 | <input type="checkbox"/> 9. Note and return              |                                      |
| <input type="checkbox"/> 2. As requested     | <input checked="" type="checkbox"/> 10. Necessary action |                                      |
| <input type="checkbox"/> 3. Approval         |  |                                      |
| <input type="checkbox"/> 4. Comments         | <input type="checkbox"/> 11. See me                      | <input type="checkbox"/> 15. Please  |
| <input type="checkbox"/> 5. Information      | <input type="checkbox"/> 12. Call me                     | answer by                            |
| <input type="checkbox"/> 6. Corrections      | <input type="checkbox"/> 13. File                        |                                      |

**REMARKS**

Please refund \$\_\_\_\_\_ user fee.

**Explain reason for refund here.**

**Group Manager Approval:**

\_\_\_\_\_

From	Phone Number	Room No.
	Date	

FORM 1725



## **EXHIBIT 4 RETURN OF APPLICATION FOR LACK OF RESPONSE**

### **EP DETERMINATIONS QUALITY ASSURANCE BULLETIN**

**FY-2001 No. 3**

Date: January 25, 2001

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#### **RETURN OF APPLICATIONS FOR LACK OF RESPONSE**

This Bulletin clarifies EP's position on the circumstances under which applications may be returned for failure of the applicant to respond to requests for information and/or amendments, and explains the methodology to be employed when returning them.

There has been a lack of uniformity regarding the handling of such "no response" situations. Some offices have routinely returned such plans and the accompanying application packages to the submitter by means of Letter 2234. Others have returned them with different letters, some of which were locally developed. Still others have prepared proposed adverse determination letters based on the plans' apparent failure to comply with the qualification requirements being questioned. Review of pertinent IRM provisions, written communications from Chief Counsel, and discussions with personnel in EP Technical Guidance and Quality Assurance led to the development of the policy set forth in this Bulletin.

Once a case has passed the screening phase and been assigned to a group it is up to the agent working the case to identify all necessary amendments to plan language and to request them from the plan sponsor/POA. With respect to individually designed plans (other than terminations), if the agent does not receive a response to the request for plan amendments in a reasonable amount of time, he/she is expressly authorized to return the case to the applicant by means of Letter 2234 (Attachment A) *if the language deficiencies are numerous and egregious*. Letter 2234 is specifically designed to return those plans that do not comply with existing qualification requirements, and are so technically deficient that they cannot be reviewed in a reasonable amount of time. This is a judgement call and should be carefully considered by the agent and concurred with by the manager, keeping in mind that, if the applicant files for a declaratory judgement under IRC 7476, the Service may have to defend the position that the plan, as submitted, is so technically deficient that it constitutes a failure on the applicant's part to

exhaust its administrative remedies. It is important to note that Letter 2234 must be accompanied by an itemized explanation of those areas in which the plan is deficient. This is essential to the creation of an administrative record that can be referred to should the determination case become the subject of litigation. Note that use of Letter 2234 cannot be used in the

## **RETURN OF APPLICATIONS FOR LACK OF RESPONSE JANUARY 25, 2001**

case of plan terminations. Language deficiencies in terminating plans must be addressed by proposed plan disqualification.

Generally speaking, except for the grossly deficient situation described above, plans should NOT be returned for language deficiencies alone. However, plans may be returned as incomplete when the application package lacks items or information that is required for proper processing, and the applicant/representative fails to provide it. This could include missing or incorrect user fees (generally a screening matter), missing or incorrect/incomplete attachments, such as Schedule Q demonstrations, or items of a similar nature that are required by a Revenue Procedure or by the application instructions. So, even though technical deficiencies requiring amendment may not rise to the level of egregiousness needed for the Letter 2234, missing administrative items can serve as a basis for returning the case. A special 15-day letter (Attachment B) has been developed for use by screeners when returning applications that cannot be perfected. This letter can also be used by agents working the cases to provide the applicant fair warning prior to returning the plan via Letter 1012 (Attachment C).

If the agent requests plan amendments but the plan sponsor/POA declines to make them because of a genuine belief that the plan as written is acceptable, the case should NOT be returned. In this instance, the agent should prepare a proposed adverse letter, as there is a genuine disagreement between the Service and the plan sponsor/POA regarding the acceptability of plan provisions. Of course, the plan could also be submitted for technical advice if appropriate as an alternative to proposed disqualification.

There will be a remaining category of plans consisting of those that are not so deficient as to warrant return with Letter 2234, and in which the plan sponsor/POA has not expressed disagreement with the Service's request for amendments, but there are no administrative shortcomings. Such cases should be processed as proposed adverse determinations.

If the application is returned via Letter 1012 (application deficiencies) or Letter 2234 (technical deficiencies), EDS should be utilized to prepare the letter. This will establish a historical record of the case. The special 15-day letter (attachment B) is currently not available on the EDS system. This attachment may be copied and modified as necessary.

## Employee Plans CPE Topics For 2002

### ATTACHMENT A

INTERNAL REVENUE SERVICE  
P. O. BOX 2508  
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date:

NAME  
STREET ADDRESS  
CITY ST ZIP

Employer Identification Number:

XX-XXXXXXX

DLN:

XXXXXXXXXXXXXXXXXX

Person to Contact:

XXXXXXXXXXXXXXXXXXXX ID XXXXX

Contact Telephone Number:

(XXX) XXX-XXXX

Plan Name:

XXXXXXXXXXXXXXXXXXXXXXXXXX

Plan Number: XXX

Original Submission Date:

XX/XX/XXXX

Remedial Amendment Period

Response Date:

Dear Applicant:

We are unable to process your application for a determination letter regarding the plan identified above because it does not include provisions to satisfy the latest requirements of the law. For this reason, we are rejecting the application at this time. Therefore, we are returning your application and our records will reflect that there is no pending request for a determination letter regarding this plan.

We are enclosing Form 886A, Explanation of Items, which outlines some of the major areas in which your plan is deficient. We are also enclosing the Alert Guideline Worksheet(s) applicable to your plan, if Form 886A does not contain a complete list of all the deficiencies. You will be able to identify any deficiencies not listed on Form 886A by completing the Worksheet(s).

The 270-day period specified in section 7476(b) of the Internal Revenue Code (relating to declaratory judgments) will not begin until we receive your complete and correct application. However, if you return a complete and correct application within 30 days from the date of this letter, we will use the original submission date for purposes of determining the remedial amendment period under Code section 401(b).

User fees are not refundable for requests that are returned to the submitter as incomplete. If you resubmit the request within 90 days from the date it is returned, no additional payment will be due. However, if you resubmit the request more than 90 days after the date of return, another user fee payment is required.

If you resubmit your application, PLEASE ATTACH A COPY OF THIS LETTER.  
Letter 2234 (DO/CG)

<b>Employee Plans CPE Topics For 2002</b>
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-2-

NAME

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,

Director,  
Employee Plans Rulings & Agreements

Enclosures:  
Application  
Form 886A  
Copy of this Letter  
Envelope

**ATTACHMENT A**

Letter 2234 (DO/CG)



**Department of the Treasury  
Internal Revenue Service  
Tax Exempt/Government**

**Entities**

DATE:

ADDRESS

Number:

**Name of Plan:**

**Plan Number:**

**Employer Identification**

**Person to Contact:**

**Telephone Number:**

**Previous Contact Date(s):**

Dear Sir or Madam:

We asked you on the above dates to furnish information about your request for a determination letter for the plan identified above.

We need the information specified on the enclosed list to process your application.

Please send the requested material within 15 days from the date of this letter so we may complete consideration of your application. If we do not hear from you within that time, we will return the application. You may resubmit it when you have secured the requested information.

Please mail the information requested in this letter to the following address:

Attn:  
Internal Revenue Service  
Room  
P.O. Box 2508  
Cincinnati, OH 45201

If you have any questions concerning this matter, please contact the person whose name and number are shown above. When you send the information requested or if you write with questions about this letter, please provide your telephone number and the most convenient time for us to call if we need to contact you.

Sincerely,



**ATTACHMENT B**

Employee Plans Specialist

Enclosure:  
Checksheet

CC:

## Employee Plans CPE Topics For 2002

### ATTACHMENT C

INTERNAL REVENUE SERVICE  
P. O. BOX 2508  
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date:

OMB Clearance Number:

XXXX-XXXX

Employer Identification Number:

XX-XXXXXXX

NAME

DLN:

NAME (CONT)

XXXXXXXXXXXXXXXXXX

STREET ADDRESS

Person to Contact:

CITY, STATE ZIP

XXXXXXXXXXXXXXXXXXXX

ID# XXXXX

Contact Telephone Number:

(XXX)XXX-XXXX

Plan Name:

XXXXXXXXXXXXXXXXXXXX

Plan Number: XXX

User Fee Response Date:

Dear Applicant:

We previously wrote to you requesting certain items, described on the enclosed list, needed to complete your application for a determination letter for the plan identified above. To date we have not received the requested items. Therefore, your application is rejected, and we are closing your case.

We are returning all material to you or your representative and our records will reflect that there is no pending request for a determination letter regarding the plan identified above. If you still wish to receive a determination letter, you or your representative should resubmit the entire package with the requested information. PLEASE ALSO RETURN A COPY OF THIS LETTER WHEN YOU RESUBMIT YOUR PLAN.

The 270-day period specified in section 7476 of the Internal Revenue Code (relating to declaratory judgments) will not begin until we receive your complete and correct application.

User fees are not refundable for requests that are returned to the submitter as incomplete. If you resubmit the request by the date indicated above, no additional payment will be due. However, if you resubmit your request after that date, another user fee payment is required.

If you have questions concerning this matter, please contact the person whose name and telephone number are shown above.

Letter 1012 (DO/CG)

**Employee Plans CPE Topics For 2002**

-2-

NAME

Thank you for your cooperation.

Sincerely yours,

Director,  
Employee Plans Rulings & Agreements

Enclosures:  
List of Missing Items  
Application

**ATTACHMENT C**

Letter 1012 (DO/CG)

**EXHIBIT 5-TERMINATION WORKSHEET****TERMINATION WORKSHEET**

Plan Name: \_\_\_\_\_

EP Specialist's Initials: \_\_\_\_\_

Date Prepared: \_\_\_\_/\_\_\_\_/\_\_\_\_

INSTRUCTIONS: This worksheet may be prepared in lieu of Worksheet 6677. Complete this form only if the Technical Screening Analysis Control Sheet indicates a "full analysis" of the Form 5310 application is required. All "No" answers require appropriate follow-up action. Note in addition to this worksheet, worksheets 1 – 12 may be necessary due to a number of factors, whether or not the plan had previously received a favorable determination letter and if so, the date of that letter.

**NOTE: This worksheet is not designed to address every possible situation which may arise in reviewing a Form 5310.**

Cite  Yes No N/A 1	Does Form 5310, line 3b, indicate that notice of the filing of this application for termination, was given to interested parties, not less than 7 days nor more than 21 days before the application was filed with the Service, (Rev. Proc. 2002-6				
2	Does Form 5310 line 3c indicate the plan has received a favorable Determination Letter, and was a copy of it submitted along with the plan and all amendments thereto?				
3	If Form 5310 lines 6a or 6b indicate an affiliated service group or controlled group exists, has the required attachment to Form 5310 been provided? Are all eligible employees of the Control Group/Affiliated Service Group taken into consideration for Internal Revenue Code 410(a) and 410(b) eligibility and participation purposes?				
4	Is the proposed termination date, found on line 8a of Form 5310, a date that is later than, or the same as, the date the resolution or amendment, terminating the plan, was actually signed, for purposes of a Defined Benefit Pension plan, or, effective no earlier than the first day of the plan year, for a Defined Contribution Plan?				
4a	Did the plan actually terminate on the proposed date of termination, or, in the case of a Defined Benefit Pension plan, did another year of benefits accrue?"				

**Employee Plans CPE Topics For 2002**

5	Does Form 5310 line 8b indicate assets will be distributed as quickly as administratively feasible? If not, please ensure that the termination date is changed on line 8(a) of Form 5310 and that any additional accruals, contributions are made. Revenue Ruling 89-87.				
6	If line 8(c), of Form 5310, indicates that excess assets will revert to the employer, was the plan amended to allow for a reversion? If so, is the effective date, of the reversion, after the end of the 5 <sup>th</sup> calendar year, following the date the plan was amended, to allow for reversions, per ERISA 4044(d)?				
6a	If line 8(c) and 15(h), of Form 5310, indicate that excess assets will revert to the employer, were participant benefits, accrued under the Plan, calculated and paid out before the excess assets were determined, Internal Revenue Code section 401(a)(2), Income Tax Regulations section 1.401-2, and Internal Revenue Code section 4980? (The EP Specialist will need to fill out a referral Form 5666 to ensure the appropriate Excise Tax was paid by the employer on Form 5330 and the appropriate Income Tax was declared on the employer's tax return).				
6b	Did the distributions to participants equal the present value of accrued benefit calculations, using the actuarial assumptions that produced the largest single-sum, either the actuarial assumptions stated in the plan, or the Applicable Interest Rate and the Applicable Mortality Table, as of the termination date? (Unless the Plan terminated before Plan Years beginning after 12-31-1999 and did not apply the G.A.T.T., (P.L. 103-465) amendments).				
6c	Are the excess assets reverted to the employer subject to the 50% Excise Tax, unless a successor plan was established with 25% of the excess assets, and, 95% of the participants in the former plan are in the successor plan; or will all participants in the terminating plan have their present value of accrued benefits increased, on a pro-rata basis, by 20% of the excess assets that otherwise could have been reverted to the Employer? Then, the Employer will be subject to a 20% Excise Tax on the reverted amount instead of 50%?				
6d	Was the reversion the result of erroneous actuarial computation in accordance with section 1.401-2 of the Regulations? If so, a statement must be secured. If not, a possible exclusive benefit violation may have occurred.				
7	Does Form 5310 line 9(b) indicate vesting was not decreased because of any plan amendment(s) and is Form 5310 line 15a marked YES?				
8	Does Form 5310 line 9(c) indicate that benefits have not been decreased by a plan amendment or as a result of the plan's termination?				
9	If the reason for plan termination, stated on Form 5310, is line 10(d), (e), or (f), has a detailed explanation been provided?				

**Employee Plans CPE Topics For 2002**

10	Is the method of satisfying the coverage requirements on Form 5310 line 13(a) consistent with Schedule Q line 5(o)?				
11	Do lines 13b and 16a of Form 5310, indicate that there was not a partial termination, nor a complete discontinuance of contributions, in a profit sharing or stock bonus plan?				
11a	If a complete discontinuance of contributions has occurred, were all the account balances of affected participants nonforfeitable?				
11b	If a partial termination occurred were all affected participants fully vested in their accrued benefit/account balance?				
11c	Were all affected participants properly cashed out (if permitted by the plan) or fully vested upon the plan's termination?				
12	Does line 15(f), of Form 5310, indicate that there is no funding deficiency?				
13	Does Form 5310, line 15g(1), indicate that excess assets are to be reallocated to each participant, based upon their calculated, single-sum, present value of accrued benefits, as of the date of termination, in the ratio of their present value of accrued benefits as a percentage of the total present value of accrued benefits of all participants? If so, has a plan amendment been submitted that states a definite formula for such allocation, which satisfies Rev. Rul. 80-229?				
14	Does Form 5310 line 15(l) indicate the plan is NOT under examination? (If the plan is under examination, coordination with the examining agency must be addressed in the workpapers).				
15	If Form 5310, line 15(j), is answered YES, indicating a participant cash-out, has the applicant provided an annual compensation Schedule, with annual additions for all years, for that participant, in a Defined Contribution Plan; or detailed calculations of the present value of accrued benefit for that listed participant in a Defined Benefit Plan?				
16	For a Defined Benefit plan, if more than 60% of the present value of accrued benefits on Form 6088 are accrued by Key Employees, or more than 60% of account balances in a Defined Contribution plan are allocated to Key Employees, does it appear the non-key employees are receiving the proper top-heavy minimum accrued benefit or allocation, for each year pursuant to IRC416[c]?				

**Employee Plans CPE Topics For 2002**

17	For Defined Benefit plans, do the distributions to Highly Compensated Employees, expressed as an equivalent annual benefit, at the age of distribution, not exceed the IRC 415(b)(2)(C) dollar limits, at the age of distribution, using the assumptions found in G.A.T.T. (P.L 103-465) and S.B.J.P.A., (P.L. 104-188), (for plans not amended on the date of termination, in existence on 12-7-1994, and terminated before limitation years beginning after 12-31-1999, use the TRA-86' IRC 415(b) dollar limits using IRC 415(b)(2)(E) as of 12-7-1994)?				
18	Are the distribution modes shown on Form 5310 line 17 consistent with plan language?				
19	Does the Form 5310, line 18 balance sheet, appear to be free of exclusive benefit violations, prohibited transactions and unrelated business income? (e.g. participant loans, limited partnerships, real estate)				
19a	Do the balance sheet assets listed on Form 5310 line 18, reconcile to present value of accrued benefits distributable to participants, as found on Form 6088, and taking into account any reversions?				
19b	Has the plan been involved in any transfer of assets or liabilities (e.g. merger of plans or spin-off of assets and liabilities)? If so, does it satisfy Internal Revenue Code 411 and 414?				
20	If Schedule Q, Part I, is NOT Letter H, has an appropriate letter been entered?				
21	If Schedule Q lines 1, 3, 4, 10, 11, 12 or 13 are YES, do the demonstration(s) satisfy 401(a)(4) & 410(b)?				
22	Does line 5 of Schedule Q indicate that the ratio percentage test if Internal Revenue Code 410(b)(1)(A) has been satisfied?				
22a	If Schedule Q line 5(o), is Letter B, (average benefit test), and line 6, is NO (no Demonstration 5 is submitted), (i) Did the Prior Determination Letter rule on the Average Benefits Test, Demonstration 5?; (ii) Is the determination letter less than 3 years old?; and (iii) have the plan's demographics not changed significantly?				
22b	If the answer to 22a is no then an additional user fee and a Demo 5 must be secured and reviewed.				
23	For a 401(k) plan that allows the use of QNECs or QMACs to pass the ADP test, OR for a 401(m) plan that allows the use of QNECs or elective deferrals pass the ACP test, does the plan limit their availability to non-highly compensated employees only?				

Employee Plans CPE Topics For 2002
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24	Is this a Design-Based Safe-Harbor allocation or accrual formula under Internal Revenue Code 401(a)(4)?				
24a	If Schedule Q, line 7 is Letter N (not a design-based safe harbor) and line 9 is NO (no Demonstration 6 submitted), (i) Did the prior determination letter rule on the General Test, Demonstration 6?; (ii) Is the determination letter less than 3 years old?; and (iii) have the plan's demographics not changed significantly?				
24b	If the answer to 24a is no then an additional user fee and a Demo 6 must be secured and reviewed.				
25	Has the plan been amended to comply with all laws in effect as of the proposed date of termination?				



## **EXHIBIT 6—INTERESTED PARTY COMMENTS**

### **EP DETERMINATIONS QUALITY ASSURANCE BULLETIN**

**FY-2002 No. 2**

Date: January 07, 2002

#### **INTERESTED PARTY COMMENTS**

A plan sponsor is required to give notice to interested parties prior to submission of an application for determination of a plan's qualified status. Interested parties are defined in Reg. 1.7476-1(b) and generally include all present employees of the employer who are eligible to participate in the plan and all other present employees of the employer whose principal place of employment is the same as that of the employees eligible to participate in the plan. In cases involving plan terminations, interested parties also include former employees with accrued benefits under the plan and beneficiaries of deceased former employees with vested benefits under the plan.

Interested parties may submit their comments to the Department of Labor (DOL) or directly to the Internal Revenue Service (the Service). If an interested party or group of interested parties submits their comments to the DOL, the interested parties may request the DOL to comment on the application to the Service. The DOL then forwards the interested party comments to the Service with comments of its own, if appropriate.

Interested party comments should be associated with the determination application as soon as administratively possible and should be considered by the Service in the determination as to the qualified status of the plan. Interested party comments are not entitled to confidentiality. The Code of Federal Regulations (CFR) specifically provides that all interested party comments will be made available to the plan sponsor. See Reg. 601.201(o)(5)(v).

The purpose of this bulletin is to reiterate and clarify the procedures in Internal Revenue Manual (IRM) section 7.4.1.2.7.2 regarding the processing of determination applications when interested party comments have been received. It does not address the content of notices to interested parties, nor does it address the deadline for submitting comments either directly to the Service or to DOL. For additional guidance on interested party comments, please review the following:

IRM 7.4.1.2.7: Interested Party Concerns  
IRM 7.4.1.2.7.1: Notice Procedures  
IRM 7.4.1.2.7.2: Interested Party Comments  
CFR 601.201(o): Employee Trusts or Plans

IRC 7476: Declaratory Judgements Relating To Qualification of Certain Retirement Plans  
Reg. 1.7476: Interested Parties and Notice  
Rev. Proc. 2001-6, Part II: Interested Party Notice and Comment (revised annually)

## Procedures:

Upon receipt of a determination application containing interested party comments or the subsequent association of interested party comments with a determination application currently in process, the specialist will acknowledge the receipt of the comment(s) as required by the IRM. The specialist will mail the Acknowledgement of Receipt Letter (copy accompanying this QAB) to each interested party or the representative if the interested party comments have been consolidated.

In accordance with the IRM, the specialist should consider all comments received in arriving at a decision as to the qualified status of the plan. The specialist should note on the specialist's workpapers or on Form 5621 the effect of the comments on the specialist's final determination.

If the specialist's determination is favorable, the specialist will prepare the favorable determination letter. The specialist will also prepare Pattern Letter 1935 (copy accompanying this QAB) for each interested party (or their representative) that submitted comments. Since all determination applications involving interested party comments are subject to mandatory review, the favorable determination letter and Pattern Letter 1935 will remain in the case file to be ultimately mailed by the Quality Assurance Section (QAS).

*The IRM provides that Pattern Letter 1936 should be used to respond to comments received by interested parties on standardized plans. This letter should only be used in the event that comments are received on a standardized plan for which the plan sponsor did not file an application for a determination letter. If a determination letter was filed for a standardized plan, Pattern Letter 1935 (copy accompanying this QAB) should be used.*

If the determination is favorable, the specialist will also prepare Pattern Letter 1939 (copy accompanying this QAB) to notify the plan sponsor that interested party comments were received. Pattern Letter 1939 will remain in the case file and will be mailed by QAS at the same time that Pattern Letter 1935 is mailed.

If the determination is unfavorable, the specialist will follow the normal adverse determination procedures. As with a favorable determination, the specialist will also prepare Pattern Letter 1935 for each interested party (or their representative). The final adverse determination letter and Pattern Letter 1935 will be mailed by either the Appeals division, if an appeal is filed by the plan sponsor, or by QAS if no appeal is filed.

As noted on Pattern Letter 1935, the interested party has the right to petition the tax court for a declaratory judgement if the interested party does not agree with the determination, whether it favorable or unfavorable. Thus, it is important that the case file contain adequate documentation to support the specialist's determination as well as adequate documentation regarding the effect of the interested party comments.

To facilitate retrieval of the case file in the event that the interested party files a petition, QAS will retain the case file for a period of at least 92 days (the time within which a petition must be filed). The case file will not remain in open status on EDS, as the case will have been closed upon the favorable determination letter being approved by QAS.

As noted on page one of this bulletin, interested party comments will be made available to the plan sponsor. If a sponsor, upon receipt of Pattern Letter 1939, contacts the agent to request copies of the comments, the agent will contact QAS to obtain copies of the comments.

The IRM provides that the DOL, PBGC, and interested parties will be afforded an opportunity to discuss the written comments previously submitted. *CAUTION:* When dealing with interested parties, care should be taken to avoid improper disclosures to the interested party. Information regarding the interested party comments can be solicited from the interested party. However, actions taken with regard to the determination application should not be disclosed to the interested party. The interested party will receive notification of the Service's final determination when Pattern Letter 1935 is issued.

Interested parties are not entitled to confidentiality, as stated on page one. Anonymous comments will not be considered interested party comments. If an interested party contacts the specialist and indicates that he wishes to submit anonymous comments, the specialist should explain the non-confidentiality aspect and also advise the party that we will be unable to notify him of our final decision on the application submitted. While we will not provide a copy of the anonymous comments to the employer, it is still possible that the employer may view the comments if the application is subject to public disclosure. This bulletin does not attempt to address this issue, so the specialist should contact a disclosure specialist if the situation arises.

If you have any questions, contact EP Senior Reviewer Robert Contreras @ 214-767-0377.



Date:

**Department of the Treasury  
Internal Revenue Service  
Tax Exempt/Government  
Entities**

**A!**

**Name of Plan:**

**Plan Number:**

**Employer Identification  
Number:**

**Person to Contact:**

EPEOSpec

**Telephone Number:**

MyPhone

Dear Sir or Madam:

Thank you for your comments concerning this plan. Enclosed is a copy of a final determination letter that was issued for this plan.

Interested parties who make comments on a determination letter request may petition the U.S. Tax Court for a declaratory judgment regarding the determination if they disagree with the determination. If you wish to file such a petition, it must be made before 92 days after the date this letter was mailed to you.

If you have any questions concerning this matter, please contact the person whose name and telephone number are shown above.

Sincerely yours,

Paul T. Shultz  
Director, EP Rulings &  
Agreements

Enclosure:

**Final Determination Letter**

Letter 1935



Date:

**Department of the Treasury  
Internal Revenue Service  
Tax Exempt/Government**

**Entities**

**A!**

**Name of Plan:**

**Plan Number:**

**Employer Identification  
Number:**

**Person to Contact:**

EPEOSpec

**Telephone Number:**

MyPhone

Dear Sir or Madam:

Thank you for your comments concerning this plan. We have considered them and find that they do not have an adverse effect on the plan's qualification for favorable tax treatment. The employer may continue to rely on our favorable opinion notification letter issued to the plan sponsor.

If you have any questions concerning this matter, please contact the person whose name and telephone number are shown above.

Sincerely yours,

Paul T. Shultz  
Director, EP Rulings &

Agreements

Enclosure:  
Final Determination Letter

Letter 1936



Date:

**Department of the Treasury  
Internal Revenue Service  
Tax Exempt/Government**

**Entities**

**A!**

**Name of Plan:**

**Plan Number:**

**Employer Identification  
Number:**

**Person to Contact:**

EPEOSpec

**Telephone Number:**

MyPhone

Dear Sir or Madam:

After you adopted this plan, we received comments from interested parties about the plan's qualification.

We have determined that the comments do not have an adverse effect on the plan's qualification for favorable tax treatment.

If you have any questions concerning this matter, please contact the person whose name and telephone number are shown above.

Sincerely yours,

Paul T. Shultz  
Director, EP Rulings &

Agreements



Letter 1939



Date:

**Department of the Treasury  
Internal Revenue Service  
Tax Exempt Government**

**Entities**

**A!**

**Name of Plan:**

**Plan Number:**

**Employer Identification  
Number:**

**Person to Contact:**

EPEOSpec

**Telephone Number:**

MyPhone

Dear Sir or Madam:

Thank you for your comments concerning the above named plan. Your comments were submitted timely and will be considered in the determination process for this plan.

If you have any questions concerning this matter, please contact the person whose name and telephone number are shown above.

Sincerely yours,

Paul T. Shultz  
Director, EP Rulings &

Agreements

**EXHIBIT 7 FY-2002 NO. 1 QUALITY ASSURANCE BULLETIN**

**EP DETERMINATIONS  
QUALITY ASSURANCE  
BULLETIN**

Date: October 30, 2001

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**MULTIPLE EMPLOYER PLANS: DETERMINATION PROCEDURES**

Multiple employer determination letter applications present special procedural challenges to the Employee Plans determination specialist and to the EP determinations organization. The purpose of this bulletin is to address some of these special issues especially in light of the centralization of the determination processing function and the centralization of the EP determinations quality assurance function. This bulletin does **not** address the determination application processing of multiemployer plans under IRC 413(b) (collectively bargained plans).

**I. Background**

- Definition

A multiple employer plan is a plan maintained by two or more employers who are not related under IRC 414(b) (controlled groups), 414(c) (trades or businesses under common control), or 414(m) (affiliated service groups). Employers related under sections 414(b), (c), or (m) of the Code are treated as a single employer for determining the number of employers maintaining a multiple employer plan. Multiple employer plans are governed by the rules in IRC 413(c). The rules of IRC 413(c) do not apply to collectively bargained multiemployer plans described in Reg. 1.413-1(a).

- Distinctive Qualification Requirements/Characteristics

- A. **Single Plan.** A multiple employer plan is a single plan as defined in Reg. 1.414(l)-1(b)(1). (See Reg. 1.413-2(a)(2) and then Reg. 1.413-1(a)(2).) A single plan is a plan under which all of the assets, on an ongoing basis, "are available to pay the benefits to employees who are covered by the plan and their beneficiaries".
- B. **Single Employer.** Under a multiple employer plan some qualification requirements are applied as if all employees of each employer are employed by a single employer, e.g. sections 410(a), eligibility to participate; 411, vesting; and 401(a), exclusive benefit requirement. For instance, service with one employer is treated as service

with the other employers for determining if an employee is eligible to participate.

- C. **Separate Employers.** Under a multiple employer plan other qualification requirements are applied to each participating employer as if that employer maintained a separate plan, e.g. sections 410(b), coverage; 401(a)(4), nondiscrimination; and 416, top-heavy. For example, the coverage requirements of IRC 410(b) are applied to a multiple employer plan on an employer-by-employer basis. Each unrelated employer performs separate coverage testing with respect to its portion of the plan. The employers do not have to use the same testing rules. (See Reg. 1.413-2(a)(3)(ii) and Reg. 1.410(b)-7(c)(4)(i)(A) & (c)(4)(ii).)

Each employer's portion of the multiple employer plan must be taken into account, along with any other plans of that employer, in applying the top-heavy requirements of section 416 and the limitations of section 415. Additionally, with respect to a participant of an employer maintaining a multiple employer plan described in section 413(c), benefits or contributions and compensation received from all of the employers maintaining the plan must be taken into account when applying the section 415 limits (Reg. 1.415-1(e)).

- Special Disqualification Requirement

Under the section 413 regulations the failure of one participating employer or the failure of the plan itself to satisfy an applicable qualification requirement will result in disqualification of the multiple employer plan for all participating employers (for all "employers maintaining the plan"). Reg. 1.413-2(a)(3)(iv). For example, the failure of any participating employer to satisfy the top-heavy rules disqualifies the entire multiple employer plan for all of the employers maintaining the plan. (See Reg. 1.416-1, Q&A G-2.)

## **II. Processing Procedures**

- Traditional Determination Application Procedures

Multiple employer plans file one complete determination application (Form 5300) on behalf of the plan in the name of one employer (sometimes referred to as the "lead" employer) and a separate Form 5300 completed through Line 8 for each other employer maintaining the plan.

Under the revised determination letter application procedures described in Announcement 2001-77, each employer may now request a determination letter that considers the form of the plan only or both the form of the plan and compliance with the requirements of sections 401(a)(4), 401(a)(26), and/or 410(b).

Therefore, each separate employer in a multiple employer plan may elect to submit (a) coverage data (Line 13 of Form 5300 (Rev. 9/2001)) for the section 410(b) ratio percentage test; and/or (b) the information regarding participation, coverage, and

nondiscrimination requirements on Schedule Q. The individual determination letter for

each separate employer may be relied upon to the extent of the relevant information and demonstrations submitted for each separate employer and retained by the employer.

See Section 10 of Rev. Proc. 2001-6 and Announcement 2001-77.

- "Simplification" Option

Announcement 2001-77 also provides a streamlined and simplified choice for multiple employer plans under which a letter is issued for the form of the plan only and under which an application is filed on behalf of one employer (out of all of the employers maintaining the multiple employer plan). All employers maintaining a multiple employer plan filed under this option can rely on a favorable determination letter **issued for the plan** except with respect to the requirements of sections 401(a)(4), 401(a)(26), 401(l), 410(b), 414(s), and, if the employer maintains or has ever maintained another plan, sections 415 and 416. See Section III of Announcement 2001-77 for details under this option.

- Additional Application Procedures

A. **Powers of Attorney--Form 2848.** Each separate employer maintaining the multiple employer plan submits its own individual Form 2848. The Instructions to Line 1 of Form 2848, Taxpayer Information, require the plan name, EIN of the plan sponsor, three-digit plan number, and business address of the plan sponsor. The separate employers participating in a multiple employer plan are not related by ownership or a substantial service relationship. (A controlled group of employers is treated as one separate employer under a multiple employer plan.) Therefore, each separate employer is the plan sponsor as to its own adoption of the multiple employer plan and is responsible for executing its own Form 2848. Because these employers are not related, they do not have the authority to execute Forms 2848 for each other.

B. **Who Signs the Application?** The Instructions to Form 5300 (Rev. 9/2001) provide that "The application must be signed by the employer, plan administrator or authorized representative".

If one representative signs the Forms 5300 for multiple employers, each separate employer must execute its own Form 2848 as to that one representative. If a plan administrator signs the Forms 5300 for multiple employers, the employee plans specialist should obtain a copy of the authorizing document, i.e. the written instrument specifically empowering the plan administrator to sign the determination letter application forms for the respective employers. (See IRC 414(g) for definition of plan administrator.)

- C. **EDS Establishment.** Since October, 2000 the Service has established each separate employer for multiple employer plans on EDS as a separate entity module with its own case number and file folder number. The current EDS entity screen data on each employer indicates "M" for multiple employer plans under "Entity Type" (from Line 7 of Form 5300).

While the "lead" employer for a multiple employer plan was previously assigned a plan number of 333, this is no longer necessarily true. Currently lead employer plan numbers will only be 333 if designated as such on Form 5300 by the lead employer.

- D. **Determination Letter Design and Generation.** Each separate employer receives its own determination letter which is individually designed or created on its own EDS module. This allows the Service to retain a record of the determination letter for each employer for future retrieval if necessary. The caveats used for each employer may differ depending on various circumstances, e.g. receiving additional information to change the scope of reliance, differing plan and amendment execution dates.

The 835 determination letter does not explicitly indicate that the employer is participating in a multiple employer plan. *To facilitate this identification, we recommend use of the following new caveat (EDS caveat #98) on all multiple employer determination letters:*

***"Based on the information you have supplied, you are a participating employer in a multiple employer plan under section 413(c) of the Code."***

- E. **Separate Case Files.** A separate case file should be maintained for each employer in order to clearly document and account for each Form 5300, each form Form 2848, the various levels of reliance among the employers, and the differing determination letters.

### **III. Quality Assurance Staff Review of Multiple Employer Plans**

Multiple employer plans present a logistical challenge for a centralized quality assurance function. A multiple employer plan with numerous participating employers will most likely have at least one of its members selected for review by the TEQMS program upon case closing. Some multiple employer groups may be subject to mandatory review, e.g. because of interested party comments. The resulting shipment of cases is time consuming and cumbersome. When Quality Assurance finds it necessary to issue Reviewers' Memoranda, the problems increase. Generating and printing corrected letters is very time consuming.

To address these issues, EP Determinations Quality Assurance will implement a different approach to traditional review procedures as they apply to certain multiple employer plans. Effective with the date of this bulletin, agents who are assigned multiple

employer plans with 50 or more participating employers should contact the Manager, EP Determinations Quality Assurance **before** beginning plan review. Discussions at this point on the facts and circumstances of the specific multiple employer plan will focus on tailoring an individualized "review strategy" for the multiple employer plan. This review strategy may involve in-depth pre-review of the case files with and/or by a Quality Assurance reviewer either on-site or off-site. This pre-review could involve agreement as to which items and amendments will be requested in the agent's 1196 letter to the plan sponsor/POA. The review strategy could also involve a plan for continued monitoring of the case's progress and the approach to handling the end-stage TEQMS or mandatory review evaluations.

This quality assurance approach partially unifies the working of the case and its review. The purpose is to minimize the number of contacts with the group of employers and POA(s) and to streamline the review process through front-end participation by the Quality Assurance Staff.

If you have any questions, please contact Deborah Komar, Senior EP Reviewer, at (513) 263-3424. The Manager, EP Determinations Quality Assurance Staff may be contacted at (513) 263-3567.

## EXHIBIT 8

### TEQMS CHECKLIST

#### APPLICATION/: IRM 7.4.1

- ☐ COMPLETED
- ☐ SIGNED
- ☐ SCHEDULE Q COMPLETE (IF APPLICABLE)
- ☐ DEMOS ATTACHED (IF APPLICABLE)

#### TIMELINESS/ IRM 7.4.1 Ch. 2

- ☐ DOCUMENT IF CASE REVIEW NOT BEGUN W/I 15 DAYS FROM ASSIGNMENT
- ☐ DOCUMENT IF INFORMATION REQUEST NOT MADE W/I 6 WORKDAYS AFTER BEGINNING REVIEW/ FOLLOW UP W/I 21 CALENDAR DAYS
- ☐ DOCUMENT IF CASE NOT CLOSED W/I 5 DAYS AFTER RECEIPT OF ALL INFO
- ☐ **MANAGER** : INITIAL AND CLOSE W/I 5 WORKDAYS AFTER RECEIPT

#### TECHNICAL/ IRM 7.4.1 Ch. 2

- ☐ 401(b) COMPLIANCE SATISFIED
- ☐ PLAN QUALIFIED
- ☐ CODA QUALIFIED
- ☐ DOCUMENT THAT TIME IS COMMENSURATE WITH ISSUES

#### WORKPAPERS/ IRM 7.4.1 Ch. 2.2.4

- ☐ LEGIBLE AND ORGANIZED
- ☐ CONCLUSIONS DOCUMENTED
- ☐ SCREENER'S COMMENTS ADDRESSED
- ☐ CASE CHRONOLOGY PROPERLY COMPLETED (INCLUDING DATES, CONTACTS, ACTIONS TAKEN AND TIME CHARGED)

#### CASE ADMINISTRATION/ IRM 7.4.1, 7.4.3 & 121.3

- ☐ *POA REQUIREMENTS FOLLOWED*
- ☐ 2848 PERFECTED
- ☐ INFO REPORTS / REFERRALS PREPARED (IF APPLICABLE)
- ☐ DETERM LETTERS CORRECT
- ☐ CASE ASSEMBLED IN ACCORDANCE WITH QAB 2001-4
- ☐ 3198 ATTACHED (IF APPLICABLE)
- ☐ EDS PROPERLY UPDATED
- ☐ USER FEE CORRECT

#### CUSTOMER RELATIONS / PROFESSIONALISM/ IRM 7.4.1, 7.4.3 & 121.3

- ☐ ALL T/P CONCERNS ADDRESSED
- ☐ ORIGINAL COPY OF CORRESPONDENCE SENT TO ER
- ☐ CORRESPONDENCE PROFESSIONAL IN TONE AND APPEARANCE
- ☐ MANAGER INVOLVED (IF APPLICABLE)



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**TAXPAYER RIGHTS/ RRA98/ IRM 7.2.1, 7.4.1**

- ☐ APPRISED OF RIGHTS FOR ADVERSE (IF APPLICABLE)
- ☐ TAXPAYER'S PRIVACY PROTECTED
- ☐ 3<sup>RD</sup> PARTY NOTIFICATION PROCEDURES FOLLOWED (IF APPLICABLE)

**EXHIBIT 9****EP DETERMINATION LETTER AND CLOSING TRANSMITTAL WORKSHEET**

NAME OF CASE \_\_\_\_\_

DLN: 17007 \_\_\_\_\_

Specialist Name &amp; EDS Number: \_\_\_\_\_ Case

Number: \_\_\_\_\_

Circle applicable paragraphs &amp; enter date

Letter 835 EDS Paragraphs:

06 - Proposed Amendments

Dated: \_\_\_\_\_

07 - 2<sup>nd</sup> Proposed Amendments

Dated: \_\_\_\_\_

12 - Amendments Only

26 - Adopted Amendments

Dated: \_\_\_\_\_

27 - 2<sup>nd</sup> Adopted Amendments

Dated: \_\_\_\_\_

28 - Plan Adopted On: \_\_\_\_\_

51 - ESOP plans

91 - All amendments to DB plans

94 - Info received to change scope of reliance,

i.e. Sch Q data. Letter dated: \_\_\_\_\_

95 - Add'l info secured in conjunction with caveat 94.

Letter dated: \_\_\_\_\_

5998 - POA and Letter to POA #1 \_\_\_\_\_ POA #2 \_\_\_\_\_

7000 - Proposed Restated Plan dated: \_\_\_\_\_

Letter 1132 EDS Paragraphs:

04 - Date of Termination: \_\_\_\_\_

05 - 2<sup>nd</sup> Proposed Amendments: \_\_\_\_\_

06/09 - Reversion Paragraph (select both &amp; must also select 8503)

10 - Proposed Amendments: \_\_\_\_\_

11 - Executed Amendments: \_\_\_\_\_

44 - ESOP plans

52 - All amendments to DB plans

54 - Info received to change scope of reliance,

i.e. Sch Q data. Letter dated: \_\_\_\_\_

55 - Add'l info secured in conjunction with caveat 54.

Letter dated: \_\_\_\_\_

5998 - POA and Letter to POA #1 \_\_\_\_\_ POA #2 \_\_\_\_\_

7002 - Proposed Restated Plan dated: \_\_\_\_\_

8503 - Benefit Assurance Form

Since all termination have to be updated for current law there is no caveat number for the law indicator for Letter 1132, the law indicator will be K.

**LETTER # 835****Caveat Number****LAW INDICATOR**

87

88

89

90

92

93

96

97

**G****H****I****K****K**

(Reliance for TRA'86. Use only with caveat 89).

(Reliance for GATT, USERRA, SBJPA &amp; TRA'97)- GUST 1

(No Reliance for GATT, USERRA, SBJPA &amp; TRA'97, except as in Opinion/Notifi. Letters).

(No Reliance for GATT, USERRA, SBJPA &amp; TRA'97).

(Reliance for GATT, USERRA, SBJPA, TRA'97 &amp; Internal Revenue Restructuring &amp; Reform Act 98 - GUST 2)

Consideration of Final Section 411(d)(6) Regulations

No Reliance for CRA 2000 used in conjunction with caveat 92

(Reliance for GATT, USERRA, SBJPA, TRA '97, RRA 98, and CRA 2000)- GUST 3

Enter other caveats that should be considered: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_,

\_\_\_\_\_

☐ Enter 9001 paragraph(s) text to be added

## Employee Plans CPE Topics For 2002

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### CLOSING INFORMATION:

#### Letter 835

Plan Effective Date: \_\_\_\_\_ Vesting Code: \_\_\_\_\_ Law Indicator: \_\_\_\_\_  
Closing Date: \_\_\_\_\_ Closing Code: \_\_\_\_\_ Hours: \_\_\_\_\_ Grade: \_\_\_\_\_

#### NOTE:

Vesting Codes: A=Full & Immediate, B=Full after 2 years, C=3 Yr. Cliff, D=5 Yr. Cliff, E=6 Yr Graded, F=7 Yr. Graded, G=Other

#### Letter 1132

Closing Date: \_\_\_\_\_ Closing Code: \_\_\_\_\_ Law Indicator: \_\_\_\_\_ Hours: \_\_\_\_\_  
Grade: \_\_\_\_\_

Changes to Entity Information: (If changes are necessary, indicate changes below, copy this form and forward to EP Unpostable Clerk, Rm 4024).

## GUST I/II WORKSHEETS

GUST 1 : (For Plans Terminating Prior to Plan Years Beginning After 12-31-2001)

Plan Name: \_\_\_\_\_

Specialist: \_\_\_\_\_

1. Internal Revenue Code 414(n) Leased Employee Definition:

REQUIRED FOR PLANS WHICH DEFINE A LEASED EMPLOYEE. Has the plan been amended, for plan years beginning after December 31, 1996, to change the definition of a leased employee by

Replacing the "historically performed" criterion with the new "primary direction or control" test?

(LRM 10, D.C. & LRM 10 D.B.)

\_\_\_\_\_ Yes: \_\_\_\_\_ No (If yes, continue on, if no request an amendment)

2. Internal Revenue Code 414(q) Definition of Highly Compensated Employee

REQUIRED FOR PLANS WHICH MUST DEFINE THE TERM "HIGHLY COMPENSATED

EMPLOYEE". Effective for plan years beginning after December 31, 1996, does the plan properly

Define a "Highly Compensated Employee" as an employee who—

(a) is a 5-percent owner (within the meaning of Internal Revenue Code section 416(l) at any time during the current , OR

(b) for the preceding year—

(i) Was a 5% owner, or

(ii) had 415(c)(3) compensation in excess of \$80,000, and

(iii) if the employer can elect the application of this clause for the preceding

year,

was in the top-paid group of employees for such preceding year if in the plan language,

(c) Is a former HCE?

(LRM 11, D.C., LRM 11 D.B.)

\_\_\_\_\_ Yes: \_\_\_\_\_ No: (If Yes or NA, continue on. If  
NO, request  
An amendment and then  
continue on)

3. Internal Revenue Code 414(u) USERRA Service Crediting:

REQUIRED. Has the plan been amended, effective December 12, 1994, to comply  
with  
Internal Revenue Code 414(u)? (e.g. military reservists called to active duty cannot  
incur a Break-  
In-Service, and can contribute make up deferrals) (LRM 86, D.C./ LRM 89 D.B.)

\_\_\_\_\_ Yes \_\_\_\_\_ No (If YES, continue on. If NO,  
request an  
Amendment and then continue  
on)

4. Internal Revenue Code 411(a)(2)(C) Multiemployer 10-Year Cliff Vesting:

REQUIRED. If the plan is a multiemployer plan, does it contain a vesting schedule  
no  
Less than a 3 to 7 year graded or 5-year cliff, for plan years beginning after the later  
of  
January 1, 1997, or the date on which the last of the collective bargaining  
agreements  
Pursuant to which the plan is maintained, terminates, (determined without regard to  
Any extension thereof after the date of the enactment of this Act), or (2) January 1,  
1999?

\_\_\_\_\_ Yes \_\_\_\_\_ No

-2-

5. Internal Revenue Code 415(c)(3) Definition of Compensation:

REQUIRED. Has the plan been amended to provide that, for limitation years  
beginning  
after December 31, 1997, Internal Revenue Code section 415(c)(3) compensation  
includes  
elective deferrals under Internal Revenue Code sections 125, 402(g)(3),  
402(h)(1)(B),  
403(b), 457(b), 132(f)(4) Qualified Transit Subsidies, and employee contributions  
described in section 401(h) which are treated as employer contributions?  
(LRM 6 D.C./ LRM 6 D.B.)

\_\_\_\_\_ Yes \_\_\_\_\_ No (If Yes or NA, continue on. If NO,

request

an amendment, and then

continue on)

6. Internal Revenue Code 415(c)(1)(A) dollar limit-cost of living adjustments.

Is the IRC415(c)(1)(A) \$30,000 dollar limit, only subject to cost of living adjustments under section IRC415(d), for Limitation Years beginning December 31, 1994?

\_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ N/A

7. Internal Revenue Code 414(q), 401(a)(17), 401(k)/(m) Family Aggregation Repealed

OPTIONAL. Effective for plan years beginning after December 31, 1996, has the plan

Been amended to delete the family aggregation rules from:

- (a) the 401(a)(17) limit on compensation
- (b) the definition of highly compensated employee
- (c) the ADP and ACP ratios, if applicable?

\_\_\_\_\_ Yes \_\_\_\_\_ No

- 6a. Safe Harbor Plans Caveat

CONDITIONAL. If family aggregation is not repealed, the general test under Income Tax

Regulations 1.401(a)(4)-2(c) or 3(c) must be used.

8. Internal Revenue Code 417 QJSA 30/90 Day Notice Period Waived

OPTIONAL. Effective for plan years beginning after December 31, 1996, if the plan has been

Amended to provide that the QJSA notice may be given after the annuity starting date, benefits do

Not commence earlier than 30 days after the notice is given, and do the participant and spouse

Have the right to waive that 30-day waiting period and substitute a 7 day waiting period?

(LRM 42, Section 5 D.C., LRM 46 Section 5 D.B.)

\_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ N/A

9. Internal Revenue Code 401(d) Owner-Employee Plan Aggregation Repealed

OPTIONAL. For plan years beginning after December 31, 1996, if the plan is an "owner-employee"

Plan within the meaning of Internal Revenue Code section 401(d), have the

restrictions once imposed

On such plans (where more than one business and more than one qualified plan exists) been removed?

(LRM 12 D.C. LRM 12 D.B.)

\_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ N/A

-3-

9. Internal Revenue Code 411(a)(11) & 417(e) Employer Cashout threshold increased to \$5,000

OPTIONAL. Has the plan been amended to provide that, for plan years beginning after August 5,

1997, the cashout threshold has increased from \$3,500 to \$5,000? Does the

“Lookback Rule” only

apply to distributions prior to October 17, 2000?

(LRM 43 D.C./ LRM 45 D.B.)

\_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ N/A

10. Internal Revenue Code 401(a)(9) Required Beginning Date:

OPTIONAL. Effective for plan years beginning after December 31, 1996, distributions to

Non-5% owners must begin by April 1 of the calendar year following the later of:

a. the calendar year in which age 70 ½ is attained, or

b. the date the employee retires

If so, does the plan : a. provide for an actuarial adjustment to reflect the value of delayed

Distribution (DB Plans only)

b .preserve the non-5 percent owners right to elect benefit commencement

by April 1 of the calendar year following the calendar year in which age

70 ½ is attained? (Optional 1.411(d)-4 Q & A 10)

(LRM 49 Section 6 D.C/ LRM 51 section 6 D.B.)

\_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ N/A

11. Internal Revenue Code section 401(a)(5)(E):

OPTIONAL: Uniform Normal Retirement Age can now include Social Security Retirement

Age

\_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ N/A

401(K) AND 401(M) (GUST 1):

12. ADP & ACP Testing Using Prior Year Data:

OPTIONAL. For plan years beginning after December 31, 1996, the employer has the option of

Using either prior year data or current year data of NHCE's to run the ADP or ACP test. The

HCE's must always use the current year. The NHCEs data can switch from prior year to current

Year at any time, the NHCE's data can only switch from current year to prior year if:

- a. The employer made the change during the Remedial Amendment Period (e.g. Before the last day of the plan year beginning in 2001)
- b. The Employer's Plan has used the Current Year Data method, for their 401(k) Plan, For the prior 5 years
- c. It was done by the end of the first plan year, where two merged 401(k) plans, one of Which used current year data, and one of which used prior year data, for NonHighly Compensated Employees, need to use one standard NHCE data year.
- d. The employer applied for approval form the Secretary of the Treasury. (LRM VI of CODA LRMs)  
Was this done properly, including timely notice to employees?

\_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ N/A

-4-

13. For the first plan year of an initial (new) CODA, for Plan years beginning after December 31, 1996, the plan may deem, for the first plan year only, that the NHCE ADP is 3% or the current year's ADP. For all subsequent years, the plan will be required to utilize either prior year data or current year data for NHCEs. Was this properly done?  
(LRM VI of CODA LRMs)

\_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ N/A

14. If the choice of correcting a failed ADP/ACP test is to distribute excess contributions is the three Step method used? Step One: Determine the excess contribution by lowering the HCE  
With the largest percentage deferral (ADR) down to the



Next HCE with the next highest deferral percentage  
 until the  
 Test passes.  
 Step Two: Multiply the percentage reductions by the  
 compensation of  
 The respective HCEs to determine the excess  
 contribution  
 Step Three: Distribute the excess contribution starting with the  
 HCE with  
 Largest dollar deferral and reducing to the HCE with  
 the next  
 Largest dollar deferral and repeating until the  
 excess is depleted.  
 (LRM VII and XIII of CODA LRMs)

\_\_\_\_\_Yes\_\_\_\_\_No\_\_\_\_\_N/A

FOR DEFINED BENEFIT PLANS (GUST 1): (DEFINED CONTRIBUTION PLANS  
 ANSWER N/A)

15. For Defined Benefit Plans whose initial limitation year begins after 12-7-1994:

- a. Are the assumptions used to determine the Internal Revenue Code 415(b) age  
 adjusted dollar limit  
 Under Internal Revenue Code section 415(b)(2)(C) determined by using the  
 greater of  
 5% or the plan rate, and the “applicable mortality table”, for the normal form?

\_\_\_\_\_Yes\_\_\_\_\_No\_\_\_\_\_N/A

- b. Are the assumptions used to determine the benefit, (e.g. to normalize the  
 optional form to a single life annuity), under Internal Revenue Code section  
 415(b)(2)(E)(ii), the “Applicable Interest Rate” and the “Applicable Mortality  
 Table”?

\_\_\_\_\_Yes\_\_\_\_\_No\_\_\_\_\_N/A

(LRM 40 of the DB LRMs)

16. For Defined Benefit Plans whose initial limitation year begins before 12-7-1994:

- a. Do the G.A.T.T. and S.B.J.P.A. assumption changes apply, in all cases, to  
 limitation  
 Years beginning after December 31, 1994, to determine the IRC415(b)(2)(C)  
 dollar limit?

\_\_\_\_\_ Yes \_\_\_\_\_ No (If "NO", complete the  
IRC415(b) checksheet)

-5-

17. For Defined Benefit Plans whose initial Plan year begins after December 7, 1994,  
Are the following assumptions used to determine single-sum cash-outs subject to  
Internal Revenue Code 417(e)(3):

a. Using the "Applicable Interest Rate" and "Applicable Mortality Table"?

\_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ N/A

b. Is the "Applicable Interest Rate" defined as: the 30-Year Treasury Bill on  
An annual basis?

\_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ N/A

c. Is the "Applicable Mortality Table" defined as 83' G.A.M. Unisex Table, Blended,  
50% male and 50% female, (Revenue Ruling 95-6), prior to Annuity Starting  
Dates  
beginning after 12-31-2002?

\_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ N/A

d. Does the plan provide that the single-sum cash-out amount will never be less  
than  
The present value amount produced using the "Applicable Mortality Table" and  
"Applicable Interest Rate"?

\_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ N/A

e. Does the Plan provide that the "Stability Period", (which contains the annuity  
starting  
Date) is the period over which the "Applicable Interest Rate" remains stable, it is  
Either one calendar month, one calendar quarter or plan quarter, or one calendar  
Year or one plan year?

\_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ N/A

f. Does the Plan provide that the "Lookback Month", (when the 30-year Treasury  
Bill  
Rate, on an annual basis, is locked in), is either the first, second, third, fourth,

fifth

Full calendar month before the first day of the "Stability Period", or an average of Any of those aforementioned periods?

\_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ N/A

(LRM 42 & 43 D.B. LRMs)

18. For Defined Benefit Plans in existence on December 7, 1994, for purposes of Internal Revenue Code cash outs subject to IRC417(e)(3), in addition to the items on line 17:

- a. Any change in interest rate or mortality table after 12-7-1994, (other than to the "Applicable Interest Rate" and the "Applicable Mortality Table"), is it Internal Revenue Code 411(d)(6) protected?

\_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ N/A

-6-

- b. Is any interest rate, other than the PBGC only rate, in the plan as of 12-7-1994, Internal Revenue Code section 411(d)(6) protected?

\_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ N/A

- c. If the plan initially amends for the "Applicable Interest Rate" and the "Applicable Mortality Table" (and the plan's prior rate is a PBGC only rate), does the plan provide that the Single-Sum Cash-out is the larger of that calculated using the interest rate period before the amendment, and that produced using the interest rate period after the amendment, applying the "Applicable Interest Rate" and "Applicable Mortality Table", for the one year period after the later of the adoption date or effective date of the amendment?

\_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ N/A

- d. If the plan changes the timing to determine the interest rate (e.g. the "Stability Period" or "Lookback Period"), then for the one year period following the later of the adoption date of the amendment or the effective date, is the larger single-sum produced by either the "Stability Period" and "Lookback Month" before the amendment or the "Stability

Period”

and “Lookback Month” after the amendment, distributed? Was this correctly amended for?

\_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ N/A

- e. If the plan uses a PBGC only, prior interest rate, and a “Lookback Month” of the immediately Preceding month or second month before the first day of the “Stability Period” and a “Stability Period” is the one month containing the “annuity starting date”, only then can the plan avoid The one year comparison period. Has this plan provided for that?

\_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ N/A

(LRM 42 & 43 of D.B. LRMs).

#### FOR GOVERNMENT PLANS: (GUST 1)

#### 19. Internal Revenue Code section 415(b)(2)(I) Certain Reductions to \$90,000 Not Required

OPTIONAL. Has the plan been amended for plan years beginning after December 31, 1994, so

That certain disability and death benefits are not subject to the adjustments under:

- (i) Internal Revenue Code section 415(b)(2)(C) (relating to benefits commencing before Age 62), and
- (ii) Internal Revenue Code section 415(b)(5) (relating to reductions for years of Service or plan participation of less than 10 years)?

\_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ N/A

#### 20. Internal Revenue Code section 415(b)(11) Benefits not limited to 100% of Compensation

OPTIONAL. Has the plan been amended, for plan years beginning after December 31, 1994, in

Accordance with Internal Revenue Code section 415(b)(11) to delete the 100% of high 3 year

Average compensation limitation?

\_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ N/A

**(GUST 2)**

401(k) and 401(m) Provisions:

21. Safe Harbor Requirements of Internal Revenue Code section 401(k)(12)

If the plan has been amended to meet the safe harbor requirements of Internal Revenue Code section 401(k)(12), for plan years beginning after December 31, 1998, the plan should be amended  
In the following noted areas:

- (a) require that the employer notify employees each year about the use off the Safe Harbor arrangement and of their rights and responsibilities
- (b) The plan should provide a mandatory match to each eligible NHCE of 100% of their first 3% of Compensation plus a 50% match on NHCE deferrals on the next 3% to 5% of compensation deferred  
OR  
The plan should provide a nonelective contribution to each eligible NHCE of 3% of Each NHCEs compensation
- (c) The aforementioned employer contributions must be 100% vested
- (d) Permitted Disparity cannot be taken into account
- (e) The rate of matching for HCEs can be no higher than the rate of matching for NHCEs

(LRM XX of the CODAs LRMs)

\_\_\_\_\_Yes\_\_\_\_\_No\_\_\_\_\_N/A

22. Safe Harbor Requirements of Internal Revenue Code section 401(m)(11)

If the Plan has been amended to meet the safe harbor requirements of Internal Revenue Code section 401(m)(11), for plan years beginning after December 31, 1998, the plan should be amended in the following areas:

- (a) The conditions 21(a) through 21(e) are met, AND
- (b) The match found in 21(b) above, may apply to either after-tax employee contributions, 401(k) Deferrals, or both, AND
- (c) Matching contributions, in the aggregate, are capped at 6% of compensation, AND
- (d) The matching contribution percentage does not increase as the rate of employee Deferrals or after-tax contributions increases, AND
- (e) No HCE receives a matching percentage, at each level of the match, that is greater than any NHCE at each level of match.

(LRM XX of CODA LRMs)

\_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ N/A

-8-

23. Internal Revenue Code 401(k)(3)(F) and 401(m)(5)(C):

OPTIONAL. Does the plan provide for plan years beginning after December 31, 1998, that the minimum coverage requirements apply separately with respect to covered, but otherwise excludable, employees in determining if a plan or CODA satisfies Internal Revenue Code 410(b). The rules permit the plan to exclude from consideration in the ADP or ACP tests all eligible nonhighly compensated employees who have not met the minimum age and service requirements of section 410(a)(1)(A), but requires the inclusion in the test of similarly situated highly compensated employees. Does the Plan Properly apply this:

\_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ N/A

24. Hardship Distributions that qualify for Internal Revenue Code 401(a)(31) Eligible Rollover

Distribution requirements under Internal Revenue Code section 402(c)(4)(C):

Section 401(a)(31) requires plans to permit distributees to elect to have an eligible rollover

Distribution paid directly to an eligible retirement plan. Internal Revenue Code section 402(c)(4)

Defines eligible rollover distribution. The Internal Revenue Service Restructuring and Reform

Act of 1998 (RRA) amended Internal Revenue Code section 402(c)(4), effective for distributions

After December 31, 1998, to specify an additional exception to the definition of eligible rollover

Distribution for any hardship distribution described in section 401(k)(2)(B)(i)(IV).

This provision

Is REQUIRED for 401(k) Plans, profit sharing plans, and stock bonus plans, (regardless of whether they have 401(k) provisions).

(LRM 51 of D.C. LRMs)

\_\_\_\_\_ Yes \_\_\_\_\_ No.

25. Repeal of Internal Revenue Code 415(e)

Internal Revenue Code 415(e) is repealed for Limitation Years beginning after December 31, 1999,

However, it remains in force for Limitation Years beginning before January 1, 2000.

Did the plan properly amend for this?

(LRM 40 & 92 of D.B. LRMs)

\_\_\_\_\_ Yes \_\_\_\_\_ No

26. Does the plan include IRC132(f)(4) "Qualified Transportation Fringe" in the definition IRC415(c)(3)

Compensation, as elective compensation for purposes of IRC414(s), and as includible compensation for purposes of IRC403(b)(3), even though otherwise excludible from the definition of gross income?

Is this provision both effective and applied, on the later of: plan and limitation years beginning after December 31, 1997, or the first plan and limitation year it is applied in operation, or, in all cases, in Plan and Limitation Years beginning after January 1, 2001? (Notice 2001-37; Section 314(e) of the Community Renewal Tax Relief Act, P.L. 106-554; Transportation Equity Act, P.L. 105-178, section 9010).

\_\_\_\_\_ Yes \_\_\_\_\_ No

Any questions call J. Almquist (949) 246-4378.

(Rev.02-02-02)

**NOTICE 2002-1 END**

**PART III -- ADMINISTRATIVE, PROCEDURAL AND MISCELLANEOUS**

**Elimination of User Fees for Certain Determination Letter Requests Pursuant to Section 620 of the Economic Growth and Tax Relief Reconciliation Act of 2001**

## Notice 2002-1

### I. Purpose

This notice provides guidance on section 620 of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16 (EGTRRA) which provides that, for requests made after December 31, 2001, the Secretary of the Treasury or the Secretary's delegate shall not require payment of user fees for requests to the Internal Revenue Service (Service) for certain determination letters with respect to the qualified status of a pension, profit-sharing, stock bonus, annuity, or employee stock ownership plan. The guidance in this notice will help a plan sponsor determine if it is required to pay a user fee for a determination letter application.

### II. Background

Rev. Proc. 2002-6, 2002-1 I.R.B. (January 7, 2002), contains the procedures of the Service for issuing determination letters on the qualified status of employee plans under §§ 401(a), 403(a), 409 and 4975(e)(7) of the Internal Revenue Code and the exempt status of related trusts or custodial accounts under § 501(a). Section 3.01 of Rev. Proc. 2002-6 describes the types of determination letters that may be requested by a taxpayer.

Rev. Proc. 2002-8, 2002-1 I.R.B. (January 7, 2002) provides guidance for complying with the Service's user fee program as it pertains to requests for determination letters on matters under the jurisdiction of the Commissioner, Tax Exempt and Government Entities (TE/GE). Form 8717, User Fee for Employee Plan Determination Letter Request, is used as an attachment to a determination letter application to transmit the payment of the required user fee.

Notice 98-4, 1998-1 C.B. 269, provides guidance regarding SIMPLE IRA plans under § 408(p).

### III. Questions and Answers on EGTRRA section 620

Q-1: What does section 620 of EGTRRA provide?

A-1: In general, section 620 of EGTRRA provides that the Secretary of the Treasury or his delegate shall not require, for requests made after December 31, 2001, payment of user fees for certain requests to the Service for determination letters with respect to the qualified status of a pension, profit-sharing, stock bonus, annuity, or employee stock ownership plan maintained solely by one or more eligible employers, as defined in Q&A-5, or the exempt status of any trust which is part of the plan. In order to be exempt from the user fee with respect to a determination letter request, an eligible employer must also meet the requirements of Q&A-3.

Q-2: Which determination letter requests are eligible for elimination of the user fee?

A-2: In general, any determination letter request described in section 3.01 of Rev. Proc. 2002-6 that meets the requirements of this notice is exempt from the user fee. However, a request for a determination letter on the qualified status of a group trust under Rev. Rul. 81-100, 1981-1 C.B. 326, and a request for a waiver of the minimum funding requirement are not eligible for elimination of the user fee. In addition, user fees are not eliminated for any opinion or advisory letter request made by a sponsor of any master or prototype or volume submitter specimen plan that the sponsor intends to market to participating employers.



Q-3: Are user fees eliminated for all determination letter requests filed by an eligible employer after December 31, 2001?

A-3: No. User fees are not eliminated for any determination letter request made after the later of (a) the fifth plan year the plan is in existence or (b) the end of any remedial amendment period with respect to the plan beginning within the first five plan years.

Q-4: When is a plan  $\equiv$ in existence $\equiv$  for this purpose?

A-4: In general, a plan is in existence on the first day the plan was in effect. Thus, payment of a user fee generally will not be required for any determination letter request filed by an eligible employer before the first day of a plan's sixth plan year. However, a plan established as a result of a spin-off from another plan will be treated as in existence on the first day the plan from which it was spun off was in effect. Also, a plan established as the result of a merger of two or more plans will be treated as in existence on the earliest date any of the merged plans was in effect.

Q-5: Who is an "eligible employer" for purposes of determining eligibility for elimination of the user fee?

A-5: An "eligible employer" means an eligible employer (as defined in § 408(p)(2)(C)(i)(I) of the Code) that has at least one employee who is not a highly compensated employee (as defined in § 414(q)) and is participating in the plan. Under § 408(p)(2)(C)(i)(I), an employer is an eligible employer for a year if the employer had no more than 100 employees who received at least \$5,000 of compensation from the employer for the preceding year. In general, the determination of who is an eligible employer is to be made in accordance with the provisions of Q&As B-1, B-5, C-4 and C-5 of Notice 98-4, 1998-1 C.B. 269, relating to SIMPLE IRA Plans under § 408(p), as described below. Thus, for example, in determining if an employer is an eligible employer for purposes of the elimination of the user fee, all employers aggregated under § 414(b), (c) or (m) are treated as a single employer and leased employees described in § 414(n) are treated as employed by the employer.

Q-6: When is the determination of whether an employer is an eligible employer made?

A-6: The determination of whether an employer is an eligible employer is made as of the date the determination request is made. Thus, an employer will be an eligible employer with respect to a determination letter application if the following two conditions are met. First, the employer must have had no more than 100 employees who received at least \$5,000 of compensation from the employer for the calendar year immediately preceding the calendar year in which the determination letter request is filed ("the preceding calendar year"). Second, at least one employee who was not a highly compensated employee for the plan year immediately preceding the plan year in which the determination letter request is filed ("preceding plan year") must have participated in the plan for the preceding plan year. If the determination letter request is filed in the first plan year, then at least one employee who is not a highly compensated employee must participate in the plan for the plan year. See Q&A-9 regarding when an employee is treated as participating in a plan.

Q-7: Which employees are taken into account for purposes of determining if the employer had no more than 100 employees who received at least \$5,000 of compensation from the employer for the preceding calendar year met?

A-7: For this purpose, all employees employed at any time during the preceding calendar year, including self-employed individuals described in § 401(c)(1) who received earned income from the employer during the preceding calendar year, are taken into account, regardless of whether they were eligible to participate in the plan. Thus, for example, employees who are excludable under the rules of § 410(b)(3) or who have not met the plan's minimum eligibility requirements must be taken into account.

Q-8: What definition of compensation is used to determine if an employee received at least \$5,000 of compensation from the employer for the preceding calendar year?

A-8: For purposes of determining if an employee received at least \$5,000 of compensation from the employer for the preceding calendar year, in the case of an individual who is not a self-employed individual, compensation means the amount described in § 6051(a)(3) (wages, tips, and other compensation from the employer subject to income tax withholding under § 3401(a)) and amounts described in § 6051(a)(8) (elective deferrals within the meaning of § 402(g)(3) and compensation deferred under § 457). In the case of a self-employed individual, compensation means net earnings determined from self-employment under § 1402, prior to subtracting elective deferral contributions made on behalf of the individual.

Q-9: When is an employee treated as participating in a plan for purposes of determining if at least one employee who is not a highly compensated employee participated in the plan for the preceding plan year?

A-9: For this purpose, an employee is treated as participating in a plan for a plan year if the employee benefits under the plan (within the meaning of § 1.410(b)-3 of the Income Tax Regulations) for the plan year. If the plan year in which the determination letter request is filed is the first plan year of the plan, then an employee is treated as participating if the employee is eligible to benefit under the plan for the year, subject to the satisfaction of applicable conditions for accruing a benefit or receiving an allocation for the year provided in the terms of the plan (whether or not the employee satisfies these conditions).

Q-10: Is the user fee for an application for a determination letter for a plan maintained by more than one employer eliminated if any of the employers that maintain the plan are not eligible employers?

A-10: No. The user fee for an application for a determination letter for a plan maintained by more than one employer is not eliminated unless each employer that maintains the plan meets the requirements for an eligible employer under this notice. For example, the user fee for an application for a determination letter for a multiple employer plan is not eliminated unless each employer that maintains the plan is an eligible employer, even if the application is for a letter only for the plan and not for any employer that maintains the plan.

Q-11: When is the elimination of user fees effective?

A-11: The elimination of user fees is effective with respect to determination letter requests made after December 31, 2001. The user fee for any application filed before January 1, 2002, is not eliminated, regardless of when the GUST<sup>1</sup> remedial amendment period for the plan ends.

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<sup>1</sup> The term AGUST<sup>1</sup> refers to the following:

- the Uruguay Round Agreements Act, Pub. L. 103-465;
- the Uniformed Services Employment and Reemployment Rights Act of 1994,

Failure to include the proper user fee with an application filed before January 1, 2002, may result in the return of the application and possible adverse effect if the application is not resubmitted with the correct user fee within 30 days. See section 9.03 of Rev. Proc. 2002-8.

Q-12: For purposes of determining if a user fee is eliminated, when does the GUST remedial amendment period begin?

A-12: The date the GUST remedial amendment period begins can vary from plan to plan. The earliest date on which a plan's GUST remedial amendment period could have begun is December 8, 1994, the date of enactment of the Uruguay Round Agreements Act (GATT). For user fee purposes, the Service will treat the GUST remedial amendment period as beginning on December 8, 1994 in all cases. The first day of the 5-year period ending on December 8, 1994, is December 9, 1989. Thus, a GUST determination letter application for a plan that was first in existence on or after December 9, 1989, may be eligible for elimination of the user fee.

Q-13: If a determination letter application filed before January 1, 2002, is withdrawn after December 31, 2001, will the user fee be refunded?

A-13: No. As provided in section 10.01 of Rev. Proc. 2002-8, unless the Service declines to rule, a user fee will not be refunded, regardless of when the application is withdrawn.

Q-14: If a determination letter application filed before January 1, 2002, is modified after December 31, 2001, will the user fee be affected?

A-14: Generally, the modification after December 31, 2001, of a determination letter application filed before January 1, 2002, will not result in a refund of the applicable user fee. Furthermore, if the effect of the modification of the application is to change the subcategory of the application under section 6.06 of Rev. Proc. 2002-8 to a different subcategory with a higher user fee, the applicant will be required to pay the additional user fee.

For example, assume an application for a determination letter for a single-employer plan is filed on Form 5300 before January 1, 2002. The application does not request a determination with respect to the general test for nondiscrimination in amount of contributions or benefits or the minimum coverage average benefit test. The application includes payment of the required \$700 user fee. After December 31, 2001, the applicant modifies the application to request a determination regarding the average benefit test. The Service will not issue a determination letter covering the average benefit test unless the applicant pays an additional \$550, the difference between the \$700 fee and the \$1,250 fee that applies to a request for a determination with respect to the general test or the average benefit test.

Q-15: Does a form have to be filed to indicate that a user fee for a determination letter is not required?

A-15: Yes. Form 8717 is being revised to allow applicants to indicate that the application

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Pub. L. 103-353;

- the Small Business Job Protection Act of 1996, Pub. L. 104-188;
  - the Taxpayer Relief Act of 1997, Pub. L. 105-34 ;
  - the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206; and
- ☐ the Community Renewal Tax Relief Act of 2000, Pub. L. 106-554.

meets the requirements for elimination of the user fee and to provide for the applicant's signature in these cases. The revised Form 8717 is to be used with all section 620 applications that are filed after December 31, 2001 (which is when that section becomes effective). The revised form will be available to be downloaded from the IRS Web Site at [http://www.irs.gov/forms\\_pubs/forms.html](http://www.irs.gov/forms_pubs/forms.html). Failure to include Form 8717, or to sign it, if required, may result in the return of the determination letter application.

#### IV. Effect on Documents

Rev. Proc. 2002-6 and Rev. Proc. 2002-8 are modified.

#### Drafting Information

The principal drafter of this notice is James Flannery of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number), between the hours of 8:00 a.m. and 9:30 p.m. Eastern Time, Monday through Friday. Mr. Flannery may be reached at 1-202-283-9888 (not a toll-free number).